1–3–11 Monday
Vol. 76 No. 1 Jan. 3, 2011

Pages 1–250

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

Printed on recycled paper.

Contents

Federal Register

Vol. 76, No. 1

Monday, January 3, 2011

Administrative Conference of the United States
NOTICES
Recommendation Adoptions, 81–83

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Housing Service

Animal and Plant Health Inspection Service
NOTICES
Availability of Petitions and Environmental Assessments:
Pioneer Hi-Bred International, Inc.; Determination of Nonregulated Status for Corn Genetically Engineered To Produce Male Sterile/Female Inbred Plants, 83–84

Army Department
NOTICES
Requirement for Commercial Users To Use Commercial Public Key Information Certificate, 126–127

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 147–148

Centers for Medicare & Medicaid Services
NOTICES
Medicaid Program:
Final FY 2009 and Preliminary FY 2011 Disproportionate Share Hospital Allotments, etc., 148–159

Coast Guard
RULES
Drawbridge Operation Regulations:
New Haven Harbor, Quinnipiac and Mill Rivers, New Haven, CT, 12
Security Zones:
On Waters in Kailua Bay, Oahu, HI, 12–15

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplements:
Technical Amendments, 25

Defense Department
See Army Department
See Defense Acquisition Regulations System
PROPOSED RULES
Privacy Act; Implementation, 56–57
NOTICES
36(b)(1) Arms Sales, 103–111
Meetings:
Defense Acquisition University Board of Visitors, 111
Privacy Act; Systems of Records, 111–117
Revised Non-Foreign Overseas Per Diem Rates, 117–125

Employment and Training Administration
NOTICES
Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance:
Continental Structural Plastics, North Baltimore, OH, 175
Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance:
Faurecia Emissions Control Technologies, et al., Troy, MI, 175
General Motors Co. et al., Ypsilanti, MI, 179
GMPT Warren Transmission, GM Powertrain Division, Warren, MI, 179
Hewlett Packard Co., 176–178
International Business Machines, Louisville, KY, and Charleston, WV, 174–175
Kennametal, Inc., Irwin and Bedford, PA, 175–176
Ocwen Loan Servicing, LLC, et al., North Highlands, CA, and Raleigh, NC, 178
Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, 179–183
Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, 183

Energy Department
See Western Area Power Administration
PROPOSED RULES
National Environmental Policy Act Implementing Procedures, 214–249
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 127

Environmental Protection Agency
RULES
Approvals and Promulgations of Implementation Plans:
Texas; Emissions Banking and Trading of Allowances Program, 15–17
NOTICES
Prevention of Significant Deterioration Final Determinations:
Russell City Energy Center, 142
Regional Project Waiver of Section 1605 of the American Recovery and Reinvestment Act of 2009:
Town of Smyrna, DE, 142–144

Federal Aviation Administration
RULES
Feathering Propeller Systems for Light-Sport Aircraft Powered Gliders, 5–9
Modification of the Process for Requesting Waivers:
Mandatory Separation Age of 56 for Air Traffic Control Specialists, 9–12
PROPOSED RULES
Airworthiness Directives:
Airbus Model A310 Series Airplanes, 36–46, 50–56
Airbus Model A310–203, –204, –222, –304, –322, and –324 Airplanes, 46–50
Boeing Co. Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes, 31–34

Boeing Co. Model 757 Airplanes, 28–31

Federal Contract Compliance Programs Office
PROPOSED RULES
Interpretive Standards for Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices:
Proposed Rescission, 62–64

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 17–25

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 206–207

Federal Railroad Administration
PROPOSED RULES
Safety and Health Requirements Related to Camp Cars, 64–78

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of Bank or Bank Holding Company, 144

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 144–146

Federal Transit Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Transit Improvements to the North Red and Purple Lines, Cook County, IL, 207–210

Foreign-Trade Zones Board
NOTICES
Expansions/Reorganizations of Foreign-Trade Zones:
Foreign-Trade Zone 202, Los Angeles, CA, 86–87
Grant of Authority for Subzone Status:
Cummings, Inc.; Memphis, TN, 87
REC Silicon (Polysilicon and Silane Gas); Moses Lake, WA, 88
Skechers USA, LLC; Moreno Valley, CA, 87
ThyssenKrupp Steel and Stainless USA, LLC (Stainless and Carbon Steel Products), Calvert, AL, 87–88
Voluntary Terminations:
Foreign-Trade Subzone 102A; Ford Motor Corp., Hazelwood, MO, 88

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Withdrawal, 84–85
Meetings:
Coconino Resource Advisory Committee, 85
National Urban and Community Forestry Advisory Council, 85–86
Nye/White Pine County Resource Advisory Council Committee, 85

Grain Inspection, Packers and Stockyards Administration
NOTICES
Solicitations of Nominations:
Members of USDA Grain Inspection Advisory Committee, 86

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Advisory Committee on Minority Health; Correction, 146–147

Health Resources and Services Administration
NOTICES
Discretionary Grant Program, 159–160
Meetings:
National Advisory Committee on Rural Health and Human Services, 160–161

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Resident Opportunities and Supportive Services Program Forms for Applying for Funding, 164–165

Indian Affairs Bureau
NOTICES
Indian Gaming, 165

Interior Department
See Indian Affairs Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Orders, Findings, or Suspended Investigations; Sunset Reviews, 89
Initiation of Five-Year (Sunset) Reviews, 89–90
Opportunity to Request Administrative Review:
Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, 90–92
Preliminary Determinations in the Countervailing Duty Investigations:
Multilayered Wood Flooring from the People's Republic of China; Postponement, 92

International Trade Commission
NOTICES
Fresh and Chilled Atlantic Salmon From Norway, 166–168
Heavy Forged Hand Tools From China, 168–171
Paper Clips from China, 171–174

Justice Department
See Justice Programs Office

Justice Programs Office
NOTICES
NIJ Draft Metal Detector Standards for Public Safety, 174

Labor Department
See Employment and Training Administration
See Federal Contract Compliance Programs Office

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council; Aeronautics Committee, 183–184

National Highway Traffic Safety Administration
PROPOSED RULES
Federal Motor Vehicle Safety Standards:
Engine Control Module Speed Limiter Device, 78–80
NOTICES
Reports, Forms, and Record Keeping Requirements, 210–212

National Institute of Standards and Technology
NOTICES
Funds Availabilities:
Summer Undergraduate Research Fellowships Gaithersburg and Boulder Programs, 93–98

National Institutes of Health
NOTICES
Meetings:
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 161

National Oceanic and Atmospheric Administration
RULES
Fisheries of Exclusive Economic Zone Off Alaska:
Reallocation of Pacific Cod in Bering Sea and Aleutian Islands Management Area, 26–27
NOTICES
Environmental Impact Statements; Availability, etc.:
Amendment 21 to the Snapper-Grouper Fishery Management Plan of the South Atlantic, 100–101
Amendment 22 to the Fishery Management Plan for Snapper-Grouper Resources of the South Atlantic, 101–103
Amendment 24 to the Fishery Management Plan for Snapper-Grouper Resources of the South Atlantic, 99–100
Amendment 5 to the Golden Crab Fishery Management Plan of the South Atlantic, 98–99
Meetings:
Fisheries of Gulf of Mexico; Southeast Data, Assessment, and Review, 103

National Park Service
PROPOSED RULES
Special Regulations:
Areas of the National Park System, National Capital Region, 57–62
NOTICES
Meetings:
Paterson Great Falls National Historical Park Advisory Commission, 165–166

National Science Foundation
NOTICES
Buy American Waivers Under 2009 American Recovery and Reinvestment Act, 184–187

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
Exemptions from Implementation Deadline for New Security Requirements, 187–189
Final Regulatory Guides; Issuance, Availability, 189
Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler (TSTF–513):
Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation; Revision 3; Availability, 189–190

Peace Corps
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 190–191

Postal Regulatory Commission
NOTICES
New Postal Products, 191–194

Rural Housing Service
RULES
Section 538 Guaranteed Rural Rental Housing Program:
Continuous Construction-Permanent Loan Guarantees, 1–5

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
National Futures Association, 202–205
NYSE Arca, Inc., 194–201

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 205–206

Substance Abuse and Mental Health Services Administration
NOTICES
Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards, etc.:
Current List, 161–163

Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Waybill Sample, 212

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
CBP Regulations Pertaining to Customs Brokers, 163–164
Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006, 164

Western Area Power Administration
NOTICES
Proposed Power, Transmission, and Ancillary Services Rates:
Central Valley Project, et al., 127–142

Separate Parts In This Issue

Part II
Energy Department, 214–249

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
3565 1

10 CFR
Proposed Rules:
1021 214

14 CFR
1 5
65 9
Proposed Rules:
39 (6 documents) 28, 31, 34, 42, 46, 50

32 CFR
Proposed Rules:
311 56

33 CFR
117 12
165 12

36 CFR
Proposed Rules:
7 57

40 CFR
52 15

41 CFR
Proposed Rules:
60-1 62
60-2 62

44 CFR
65 (2 documents) 17, 23

48 CFR
252 25

49 CFR
Proposed Rules:
228 64
571 78

50 CFR
679 26

Rules and Regulations

Federal Register

Vol. 76, No. 1

Monday, January 3, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AC80

Continuous Construction-Permanent Loan Guarantees Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) (an agency within the Rural Development mission area) is amending its regulations to add an additional form of guarantee that is now available under its Guaranteed Rural Rental Housing Program. A single, continuous guarantee during the construction phase for construction advances and the permanent financing phase of the project (for loans that meet certain criteria) will now be provided in addition to the two existing forms of guarantees under the program. This action is taken to enhance efficiency, flexibility, and effectiveness in managing the program.

DATES: *Effective Date:* The final rule is effective on February 2, 2011.

FOR FURTHER INFORMATION CONTACT: Tammy S. Daniels, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. E-mail: *tammy.daniels@wdc.usda.gov*. Telephone: (202) 720–0021. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined not to be significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) the appeal procedures of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, § 1940.310(e)(3). Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required. Loan applications will be reviewed individually to determine compliance with NEPA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect both small and large entities in the same manner. This rule has no significant changes in information collection or regulatory requirements that would have a negative impact on either small or large entities in an economic way.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.438.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, Subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J (available in any Rural Development office).

Paperwork Reduction Act of 1995

The information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0174 in accordance with the Paperwork

Reduction Act of 1995. No person is required to respond to a collection of information unless it displays a valid OMB control number.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

Background Information

The Guaranteed Rural Rental Housing Program (GRRHP) currently offers two forms of guarantees: (1) A guarantee for permanent loans and (2) a guarantee which provides a limited duration guarantee for advances during the construction period with the limited duration provision being automatically removed if certain conditions are met. Under this final rule, the Agency creates, for loans meeting certain criteria and subject to the availability of funds, an option for a single, continuous guarantee during the construction phase for construction advances and the permanent financing phase of the project. This third option was created in response to input from GRRHP stakeholders who believe that this option will allow the program to serve more borrowers thus making affordable housing available for more low to moderate income families. This final rule also includes technical corrections and clarifications and removes the anachronistic requirement that lenders certify that their computer systems comply with year 2000 technology. The proposed rule can be found at 75 FR 4707–4710. Additionally, this final rule removes the definition for "combination construction and permanent loan" and added definitions for "construction and permanent loan," "construction contingency reserve," "lease-up period," "lease-up reserve," "loan-to-cost ratio," and "operating and maintenance reserve."

Comments Received on the Proposed Rule

On January 29, 2010, RHS (an agency within the Rural Development mission area) proposed an additional form of guarantee under the Guaranteed Rural Rental Housing Program regulation. The Agency received comments from five entities in response to the proposed rule. Comments were supportive of the new guarantee option offered in the proposed rule. One commenter stated that they supported the additional form of guarantee and applauded RHS' work in this area. The commenter believed the continuous guarantee will reduce the complexity of the program, making housing affordable for more low to moderate income families. Another commenter also stated that the continuous guarantee is a good idea and that it would provide a financing vehicle for additional multifamily housing construction. The Agency appreciates the support received from commenters in regard to the new continuous guarantee option. Specific comments were also received in three particular areas: Construction contingency reserve, the guarantee requirements, and the processing requirements. These comments are summarized below.

Construction Contingency Reserve

Two comments were received regarding the construction contingency reserve. The first comment was related to the definition provided in the proposed rule which read: "This reserve will be held by the lender and will only be disbursed for Agency and lender approved change order requests." The commenter's concern was that, as written, the language could be interpreted to mean that change order requests need only be approved by the Agency or the lender. The commenter recommended the language be rewritten to provide that the funds will only be disbursed for change order[s] requests that are approved by both the Agency and the lender. In response to this comment, the Agency has revised the definition to read: "A cash reserve of at least two percent of the construction contract, inclusive of the contractor's fee and all hard and soft costs, which must be set up and fully funded by the closing of the construction loan. This reserve will be held by the lender, and funds will only be disbursed for change order requests approved by the Agency and the lender."

The second comment on construction contingency reserve stated that it would be useful to clarify the timing of the release of unused reserve funds as there are inconsistent interpretations among various State agencies. The commenter recommended releasing these funds at the same time that the 90/90 reserve funds are released. In response to this comment the Agency has revised the definition to clarify when the unused reserve funds will be released.

Guarantee Requirements

The Agency received three comments regarding the guarantee requirements. One commenter recommended removal of the following language in § 3565.52(c)(3) which the commenter viewed as unnecessary: "Only projects that have low loan-to-cost ratio, as specified by the Agency in a Notice published periodically in the **Federal Register**, are eligible for this type of guarantee." The Agency believes this language serves the purpose of advising readers up front that specific eligibility criteria in relation to what constitutes low loan-to-cost ration is subject to change and appropriate notification will take place periodically in the **Federal Register**. Accordingly, this language was unchanged.

The second commenter asked what is intended by the term "low loan-to-cost ratio" in § 3565.52(c)(3). The commenter further stated that this [achieving a low loan-to-cost ratio] should not be a problem for Low Income Housing Tax Credit properties but could be for other properties, and that RHS should not arbitrarily limit the availability of the new guarantee. In response to this comment, the Agency reserves the right in the regulation to periodically publish a threshold in the **Federal Register** to define the ratio that will be considered "low". The definition for "loan-to-cost ratio" was unchanged.

The third commenter stated that it is not clear in the proposed rule how the required lease-up reserve (in § 3565.52(c)(3)) will be calculated and expressed a concern that adding on a "substantial" lease-up reserve that must be funded up front (in § 3565.52(e)(3)) is burdensome on the project and would make the program much less useful. Specific administrative guidance on calculating the lease-up reserve will be announced through a Notice in the **Federal Register**. Supplemental guidance will be included in HB–1–3565, the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (available in any Rural Development office), and will not be published in the rule. In response to the commenter's second concern, the Agency has revised the final rule to require that the lease-up reserve be funded 30 days before first Certificate of Occupancy is anticipated (rather than up front).

Processing Requirements

In terms of processing requirements, the Agency received three comments. The first commenter asked that the word "independent" be removed from § 3565.303(c)(3). Section 3565.303(c)(3) which states that inspections must be done by an "independent" inspector. The commenter stated the requirement is that the inspector must be "qualified." The Agency agrees that the inspector must be qualified to perform inspections but in order to avoid potential conflicts

of interest; the inspector must also be independent and cannot be affiliated with the borrower or lender. This language remains in the rule.

The second comment on this subject was to remove in § 3565.303(d)(4) the requirement regarding an as-built appraisal. The commenter recommended making this required under certain circumstances in order to reduce the number of exemptions that would need to be processed. In response, the Agency revised the final rule to clarify that the as-built appraisal is required only for Options 1 and 2, but not for Option 3 (the continuous guarantee).

The final comment the Agency received on this subject was to change the requirement in § 3565.303(d)(4)(iii) that the Agency's guaranteed loan balance not exceed 50% (in order to qualify for an exception to the as-built appraisal). The commenter recommended that this figure be revised to be 90%. The commenter's point was that if a construction loan can be done at 90% and then rolled into a permanent loan, there is no difference in risk, and loans with less leveraging can be more easily moved into the secondary market. As noted above, the as-built appraisal is required only for Options 1 and 2, but not for Option 3 (the continuous guarantee) so this provision does not apply.

In addition, a conforming change has been added as section 3565.303(f). Though the continuous guarantee will be seamless from the construction phase to the permanent financing phase, the loan must still be in compliance with 7 CFR part 3565. Section 3565.303(f) simply clarifies the specific requirements.

List of Subjects in 7 CFR Part 3565

Bankruptcy, Banks, Banking, Civil rights, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonding.

Accordingly, chapter XXXV, title 7, Code of Federal Regulations is amended as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

■ 2. Section 3565.3 is amended by removing the definition for "combination construction and permanent loan" and by adding alphabetically definitions for "construction and permanent loan," "construction contingency reserve," "lease-up period," "lease-up reserve," "loan-to-cost ratio," and "operating and maintenance reserve" to read as follows:

§ 3565.3 Definitions.

* * * * *

Construction and permanent loan. A loan which provides advances during the construction period and remains in place as a permanent loan at the completion of construction.

Construction contingency reserve. A cash reserve of at least two percent of the construction contract, inclusive of the contractor's fee and all hard and soft costs that must be set up and fully funded by the closing of the construction loan. This reserve will be held by the lender, and funds will only be disbursed for change order requests approved by the Agency and the lender. Unused funds from the construction contingency reserve will be held in the operating and maintenance reserve and cannot be released to the borrower until the project reaches an occupancy of 90% for 90 consecutive days. In addition the reserve accounts established in the conditional commitment must be fully funded prior to the release of the construction contingency reserve. These requirements remain in effect regardless of whether the lender has established a lease-up reserve in lieu of the occupancy requirement.

* * * * *

Lease-up period. The period of time that begins when the first unit in the project receives a certificate of occupancy until the time that occupancy of 90% of the units for a minimum of 90 consecutive days is achieved.

Lease-up reserve. A cash deposit which is available to a property to help pay operating costs and debt service at the initiation of operations while units are being leased to their initial occupants.

* * * * *

Loan-to-cost ratio. The amount of the loan divided by the total cost to develop the project.

* * * * *

Operating and maintenance reserve. A cash reserve required of all projects of at least two percent of the loan amount held by the lender that is used for the up-keep of the project.

* * * * *

Subpart B—Guarantee Requirements

■ 3. Section 3565.51 is revised to read as follows:

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an eligible or approved lender, the Agency will commit to providing a guarantee for a permanent loan or a construction and permanent loan, subject to the availability of funds.

■ 4. Section 3565.52 is amended by revising paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

§ 3565.52 Conditions of guarantee.

* * * * *

(c) *Types of guarantees.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. The Agency will not guarantee construction loans only. The Agency offers the following types of guarantees:

(1) *Option One.* The Agency may guarantee permanent loans subject to the conditions specified in § 3565.303(d). The maximum guarantee for a permanent loan will be 90 percent [unless the Agency establishes a different percent and announces this different percent through a Notice in the **Federal Register**] of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in § 3565.452.

(2) *Option Two.* The Agency may provide a guarantee which will cover construction loan advances (advances) during construction. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the **Federal Register**] of the amount of principal and accrued interest up to default for amounts which exceed the original advance if for eligible uses of loan proceeds or 90 percent of the original principal amount and accrued interest up to default of the loan. The Agency's guarantee will cover losses to

the extent aforementioned once all sureties/insurances and/or performance and payment bonds have fully performed their contractual obligations. A construction contingency reserve is required. This guarantee will be enforceable during the construction period but will cease to be enforceable once construction is completed unless and until the requirements for the continuation of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s). The Agency will provide written confirmation to the lender when all of the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

(i) Twenty-four months from the closing of the construction loan, if the certificates of occupancy for all units in the project have not been issued by then, or

(ii) The date of the issuance of the last certificate of occupancy, if the certificates of occupancy for all units in the project are issued on or before 24 months from the closing of the construction loan.

(3) *Option Three.* The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, which will be defined by the Agency in a Notice published periodically in the **Federal Register**, are eligible for this type of guarantee. A construction contingency reserve is required. The Agency may require that a lease-up reserve, in an amount established by the Agency and announced through a Notice in the **Federal Register**, be set-aside prior to closing the construction loan. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the **Federal Register**] of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default.

(d) *Maximum loss payment.* The maximum loss payment to a lender or holder is as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and up to 90 days of accrued interest as evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

(e) *Funding of reserves.* For each Option under paragraph (c) of this section, the lender must require an operating and maintenance reserve and provide the Agency adequate evidence of the funding of all required reserves.

(1) For Option 1 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(2) For Option 2 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(3) For Option 3 under paragraph (c) of this section, the operating and maintenance reserve must be fully funded before the issuance of the guarantee. The lease-up reserve must be funded 30 days before the first Certificate of Occupancy is anticipated.

Subpart C—Lender Requirements

§ 3565.103 [Amended]

■ 5. Section 3565.103 is amended by removing paragraph (d)(9).

§ 3565.106 [Amended]

■ 6. Section 3565.106 is amended by removing the word "combination."

Subpart G—Processing Requirements

■ 7. Section 3565.303 is amended by revising paragraphs (c) and (d) and adding paragraph (f) to read as follows:

§ 3565.303 Issuance of loan guarantee.

* * * * *

(c) *Guarantee during construction.* When requesting a guarantee on construction loan advances under § 3565.52(c)(2) and (c)(3), Options 2 and 3, the Agency will only issue a guarantee to an approved lender that the Agency determines is eligible under § 3565.106 of this part.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain one of the following protections:

(i) Surety bonding or performance and payment bonding acceptable to the Agency;

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge to the lender of collateral that is acceptable to the Agency.

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee of a permanent loan provided under § 3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies, in writing, the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) A new appraisal based upon completion of construction. Upon a

lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) *Original appraisal*—the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) *Valuation*—the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

(iii) *Guaranteed loan balance*—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the **Federal Register**] of the project's total development costs.

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

* * * * *

(f) *Continuous Guarantee Compliance.* The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the property;

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

Subpart J—Assignment, Conveyance, and Claims

§ 3565.457 [Amended]

■ 8. Section 3565.457 (c)(1)is amended in the first sentence by removing the word "collectibility" and adding "collectability" in its place.

Dated: December 3, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–33042 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. FAA–2010–0812; Amendment No. 1–66]

RIN 2120–AJ81

Feathering Propeller Systems for Light-Sport Aircraft Powered Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule with request for comments amends the definition of light-sport aircraft by removing "auto" from the term "autofeathering" as it applies to powered gliders. This amendment will allow both manual and autofeathering propeller operation for powered gliders that qualify as light-sport aircraft.

DATES: This rule becomes effective on March 4, 2011. Submit comments on or before February 2, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0812 using any of the following methods:

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

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 our docket Web site, anyone can find and read the 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 or visit 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: Terry Chasteen, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–114, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329–4147; fax: (816) 329–4090; e-mail: *terry.chasteen@faa.gov.* For legal questions concerning this rule, contact David Pardo, Office of Chief Counsel, AGC–240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3073; fax: (202) 267–7971.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment because this amendment is relieving in nature, imposes no burden on the public, and is responsive to a petition for exemption and related public comments which sought the relief granted by this rule. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134, February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite 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 this final rule. The most helpful comments reference a specific portion of the final rule, 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 final rule. Before acting on this final rule, 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 final rule in light of the comments received.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the persons listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations%5Fpolicies/rulemaking/sbre_act/.*

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with 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 establishes minimum standards required in the interest of safety for the design of aircraft.

Background

Currently, the definition of light-sport aircraft in § 1.1 General Definitions, Title 14, Code of Federal Regulations (14 CFR), specifies that powered gliders that are light-sport aircraft have a fixed or autofeathering propeller system. The restriction to "autofeathering" has resulted in varying applications of light-sport aircraft (LSA) design.

In 2004, the FAA issued the final rule "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft" (Sport Pilot Rule) (69 FR 44772, July 27, 2004). That rule established a definition for the term "light-sport aircraft." Since we adopted that rule, the FAA has been working with the LSA industry in evaluating the overall LSA program. The past five years have seen remarkable growth in the overall LSA industry. Over 1,200 new factory-built airplanes, powered parachutes, and weight-shift control aircraft have received special airworthiness certificates in the special LSA category. One exception to this rapid growth is LSA powered gliders.

The FAA has determined that a propeller on a LSA powered glider can be safely feathered using either a manual or automatic feathering propeller system, which justifies replacing the term "autofeathering" with "feathering." We discuss this determination in the following section.

Feathering Propeller Systems for Soaring Flight

When we published the notice of proposed rulemaking (NPRM) entitled Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft on February 5, 2002 that proposed a definition for LSA, we intended that LSA be simple in design and operation and appropriate for operation by sport pilots. For aircraft design, low performance within the constraints of light weight and structural integrity were important. For aircraft operation, simple mechanical systems within the constraints of sport pilot training requirements were important. In that NPRM (67 FR 5376), we stated that "a light sport aircraft, if powered, would be limited to a fixed or ground adjustable propeller." We determined that "a propeller that could not be adjusted in pitch during flight was necessary to limit the operational complexity of the aircraft and would be consistent with the skills necessary to hold a sport pilot certificate."

Some commenters requested that controllable pitch propellers be permitted on LSA. We disagreed that the LSA definition should be revised accordingly because it would require a level of training for sport pilots and repairmen that would not be commensurate with the privileges of their certificates. However, for powered gliders, we revised the final rule to permit autofeathering propeller systems on LSA powered gliders to decrease drag while soaring.

In June 2008, the Light Aircraft Manufacturers Association (LAMA) petitioned the FAA for an exemption to allow manual feathering of a propeller in LSA powered gliders. As part of its request, LAMA provided information concerning the design and operation of manual feathering propeller systems. This petition can be found in Docket No. FAA–2008–0737.

The FAA received approximately 16 comments from 13 commenters in response to the petition. All the commenters supported the petition for exemption. Comments on the petition highlighted the overall benefits for a

LSA powered glider to have the option of being equipped with a manual feathering propeller system.

After reviewing LAMA's petition and the comments received in support of it, the FAA has determined that a change to the definition of LSA for powered gliders is appropriate. The FAA agrees that autofeathering propeller systems are not necessary for the safe operation of LSA powered gliders. These systems, which are typically found in multi-engine aircraft, automatically feather a propeller in the event of a power loss during takeoff. These systems can be complex, heavy, and expensive.

On the other hand, powered gliders typically incorporate a simple, manual feathering propeller system. These simple, two-position manual feathering systems are more consistent with the intended use of a LSA powered glider and the expected level of complexity for LSA operations. For example, these systems allow the pilot to feather the propeller by toggling a switch or moving a lever in the cockpit. This system rotates the propeller blades to be aligned with the wind—from power configuration to soaring configuration—so that the glider may maximize gained altitude through thermal lift only. The ability to feather the propeller is desirable when the glider is aloft and the engine has been intentionally shut off.

A manual feathering propeller system is the lightest, simplest, and most direct way to rotate the propeller blades from power configuration to soaring configuration. This translates to a lower glider weight that may result in better performance and fewer parts or systems that could fail (*i.e.,* better reliability) than with autofeathering systems, while still maintaining low cockpit workload and pilot distraction.

Design and Standards

Under the provisions of the Sport Pilot rule and the revised Office of Management and Budget (OMB) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," dated February 10, 1998, the LSA industry and the FAA have been working with the American Society for Testing and Materials (ASTM) International to develop consensus standards for aircraft issued special airworthiness certificates in the LSA category under § 21.190 for Special Light-Sport Aircraft (S–LSA). These consensus standards, once accepted by the FAA, satisfy the agency's goal for airworthiness certification and establish a verifiable minimum safety level for S–LSA. In addition, use of the consensus standard process assures government and industry that discussion and agreement on appropriate standards have occurred for the required level of safety.

We believe a simple manually operated propeller system for in-flight feathering would be an acceptable means of compliance with the propeller feathering provisions for LSA.

From the aircraft design perspective, we were concerned that malfunction or misuse of a manual feathering propeller on an LSA powered glider could impose a hazard to the aircraft occupants. Since publication of the Sport Pilot Rule, the FAA has reviewed powered glider accident statistics in the electronic database of the National Transportation Safety Board. The data show 32 accidents in the years 1962 through 2009 (October) with no accidents attributed to the operation of feathering or un-feathering a propeller during flight. The data also indicate that in-flight feathering of a propeller system in powered gliders—many of which are permitted to use either manual or autofeathering propeller system—does not decrease safety.

We find that a manually operated propeller system for in-flight feathering is appropriate. Currently, pilots flying LSA powered gliders are allowed to use a direct-action manual lever to operate the landing gear, which typically occurs at low altitudes during times of high pilot workload. By contrast, feathering the propeller takes place at higher altitudes when pilot workload is minimal. We have determined that this revision to the definition of a LSA recognizes the operational nature of LSA powered gliders and is consistent with the stated design and safety objectives.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no International Civil Aviation Organization (ICAO) Standards and Recommended Practices that correspond to this regulation. International standards for Light Sport Aircraft are being coordinated by ASTM International.

Good Cause for "No Notice"

Section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)) authorizes agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(B), the requirements of prior notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

This final rule will change the definition of LSA powered glider by removing "auto" from "autofeathering," which will eliminate the current restriction on manual feathering propeller designs. Prior public comment is unnecessary because the FAA has already obtained public comments regarding a petition for exemption seeking to eliminate the restriction on manual feathering propeller designs from the definition of light-sport aircraft. This final rule is responsive to those comments, all of which were in support of the petition for exemption.

We do not anticipate significant public comment on this amendment, since it does not impose a requirement.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this final rule indicates that its economic impact is minimal.

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 each Federal agency to 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 (Public Law 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 also 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 the base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final 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 cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination is that the rule is cost relieving, as it eliminates the current restriction on manual feathering propeller designs while maintaining the current safety level.

FAA has therefore determined that this final 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 of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the 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 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. This rule will not have a significant economic impact because it is cost relieving.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule with request for comments and has determined that it will have a cost relieving impact on domestic and international entities and thus has a neutral trade impact.

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 level equivalent of $100 million in CY 1995, adjusted for inflation to CY 2010 levels by the Consumer Price Index for all Urban Consumers (CPI–U) as published by the Bureau of Labor Statistics, is $143.1 million.

This final rule with request for comments does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this regulation.

Executive Order 13132, Federalism

The FAA has analyzed this final rule with request for comments under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule with request for comments does 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 312 and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule with request for comments under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a "significant energy action" under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking portal at *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 and amendment number of this rulemaking.

List of Subjects in 14 CFR Part 1

Air transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 1 of Title 14, Code of Federal Regulations, as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend the definition of "light-sport aircraft" in § 1.1 by revising paragraph (8) to read as follows:

§ 1.1 General definitions.

* * * * *

Light-sport aircraft * * *

(8) A fixed or feathering propeller system if a powered glider.

* * * * *

Issued in Washington, DC on December 22, 2010.

J. Randolph Babbit,

Administrator.

[FR Doc. 2010–33082 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No.: FAA–2010–0567; Amendment No. 65–55]

RIN 2120–AJ66

Modification of the Process for Requesting a Waiver of the Mandatory Separation Age of 56 for Air Traffic Control Specialists

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends its regulation concerning the process for requesting a waiver of the mandatory separation age of 56 for Air Traffic Control Specialists in flight service stations, enroute or terminal facilities, and the David J. Hurley Air Traffic Control System Command Center. Under this final rule, Air Traffic Control Specialists will no longer be required to certify they have not been involved in an operational error (OE), operational deviation (OD), or runway incursion in the past 5 years. The rule will streamline the waiver process and bring it into conformance with current FAA OE and OD reporting policy.

DATES: This amendment becomes effective March 4, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Kelly J. Neubecker, Airspace, Regulations, and ATC Procedures Group, Office of Airspace Services, AJV–11, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9235; facsimile (202) 267–9328, e-mail *Kelly.Neubecker@faa.gov.* For legal questions concerning this final rule contact Anne Moore, Office of Chief Counsel, AGC–240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3123; facsimile (202) 267–7971, e-mail *Anne.Moore@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator to issue, rescind, and revise regulations. Under this authority, we are amending Special Federal Aviation Regulation No. 103 in 14 CFR part 65 (SFAR 103) by removing paragraph 5.b.vii. The change is within the scope of our authority and is a reasonable and necessary exercise of our statutory obligations.

I. Background

On January 23, 2004, H.R. 2673, Consolidated Appropriations 2004, became Public Law 108–199. Within the appropriations bill, there was a mandate that "not later than March 1, 2004, the Secretary of Transportation, in consultation with the Administrator of the Federal Aviation Administration, shall issue final regulations, pursuant to 5 U.S.C. 8335, establishing an exemption process allowing individual Air Traffic Controllers to delay mandatory retirement until the employee reaches no later than 61 years of age." On January 7, 2005, the FAA published the final rule in the **Federal Register**, 14 CFR part 65 (Docket No. FAA–2004–17334; SFAR No. 103, 70 FR 1634).

The process for an Air Traffic Control Specialist (ATCS) to request a waiver from the mandatory separation age of 56 is currently codified in SFAR 103 and reflected in the Human Resources Policy Bulletin 35, Waiver Process to Mandatory Separation at Age 56. This policy applies to all ATCSs and their first-level supervisors in flight service, enroute and terminal facilities, and at the David J. Hurley Air Traffic Control System Command Center covered under the mandatory separation provisions of 5 U.S.C. 8335(a) and 8425(a).

The regulation contains information contrary to air traffic policy under amended FAA Order JO 7210.56C, Change 2, effective July 20, 2009. Specifically, paragraph 5.b.vii. of SFAR 103 requires a controller to provide a statement that they have not been involved in an operational error (OE), operational deviation (OD), or runway incursion in the last 5 years while in a control position. This requirement is inconsistent with current air traffic orders developed specifically to foster a safety culture that encourages full and open reporting of safety information and focuses on determining why events occur, rather than placing blame. In support of this culture, FAA Order JO 7210.56C, Change 2 removed all references to employee identification, training record entries, performance management, and return-to-duty actions that were historically tied to reported OE or OD events. Due to this change in policy, the reporting requirements of SFAR 103 5.b.vii. became unverifiable.

II. Summary of the NPRM

The FAA published the NPRM on June 2, 2010. (75 FR 30742, Docket No. FAA 2010–0567) The proposed rule invited comments on the proposal to remove paragraph 5.b vii of SFAR 103, since current practice made those provisions unverifiable. The proposed rule would amend only the requirement for controllers to provide a statement that they have not been involved in an operational error (OE), operational deviation (OD), or runway incursion in the last 5 years while in a control position. The proposal did not affect any other requirements for Air Traffic Controllers who request a waiver.

III. Summary of Comments

The comment period for the NPRM closed on July 2, 2010. The FAA received comments from two individuals on the proposal to amend the exemption process allowing ATC to delay mandatory retirement age. Both commenters supported waivers to extend the retirement age in general, and one commenter was also in favor of the specific proposal to remove documentation of any occurrences within the preceding 5 years. The other commenter suggested removing the

mandatory retirement age completely and focusing on the controller's ability to concentrate and do their job properly. This suggestion, however, was outside the scope of the current rulemaking.

IV. Discussion of the Final Rule

The FAA is adopting as final the proposed rule published on June 2, 2010. The final rule will become effective March 4, 2011.

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 rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform with 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 regulations.

V. 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 impacts of this 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 cost and benefits is not prepared. The FAA has made such a determination for this rule.

This rule will moderately streamline the process for ATCSs who are requesting a waiver of mandatory separation at age 56 by eliminating a paperwork obstacle. Currently, ATCSs need to provide a statement to certify that they have not been involved with an operational error (OE), operational deviation (OD), or runway incursion within the previous 5 years when submitting a request for a waiver of the mandatory separation at age 56. This rule will eliminate this certification requirement by reducing the written information ATCSs must provide, resulting in a cost saving.

We estimate ATCSs submit an average of 54 statements per year. ATCSs need approximately 5 minutes to prepare each statement, whereas air traffic managers need approximately 15 minutes to review them. The ATCS's salary including benefits expressed as an hourly wage rate with benefits is estimated to be $125 per hour;[1] and an air traffic manager's hourly rate with benefits is estimated to be $155 per hour.

Using the preceding information, the FAA estimates that the total cost savings of this final rule will be about $26,000 or $18,000 present value, as shown in Table 1.

BILLING CODE 4910–13–P

Table 1. Cost Savings for Controllers by Eliminating the Certification Requirements

Year	Cost Savings for controllers to prepare statements	Cost Savings for AT managers to review statements	Total	Discounted Total
1	$560	$2,018	$2,578	$2,409
2	$560	$2,018	$2,578	$2,252
3	$560	$2,018	$2,578	$2,104
4	$560	$2,018	$2,578	$1,967
5	$560	$2,018	$2,578	$1,838
6	$560	$2,018	$2,578	$1,718
7	$560	$2,018	$2,578	$1,605
8	$560	$2,018	$2,578	$1,500
9	$560	$2,018	$2,578	$1,402
10	$560	$2,018	$2,578	$1,311
Total	$5,600	$20,180	$25,780	$18,107

BILLING CODE 4910–13–C

FAA has, therefore, determined that this 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.

[1] This wage rate is based on 1657.7 hours. 2,080 hours (52 weeks times 40 hours per week) minus 422.3 hours (the number of hours a typical controller is not available to work) equals 1,657.7.

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.

This final rule will help extend the careers of experienced air traffic controllers and thus have no impact on private sector entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will not affect imports as it will have only a domestic impact and therefore is not subject to these Acts.

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 (in 1995 dollars) 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 $143.1 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

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 rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rule 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 regulatory action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and DOT's Regulatory Policies and Procedures, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the

beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 65

Air traffic controllers, Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

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

Authority: 49 U.S.C. 106(g). 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR 103 [Amended]

■ 2. Amend SFAR 103 by removing and reserving paragraph 5.b.vii.

Issued in Washington, DC, on December 22, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–33076 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1096]

Drawbridge Operation Regulations; New Haven Harbor, Quinnipiac and Mill Rivers, New Haven, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Ferry Street Bridge across the Quinnipiac River, mile 0.7, at New Haven, Connecticut. The deviation allows the bridge to keep one lift span closed to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 8 a.m. on January 3, 2011 through 5 p.m. on January 13, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1096 and are available online at *http://www.regulations.gov,* inserting USCG–2010–1096 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Ferry Street Bridge, across the Quinnipiac River at mile 0.7, at New Haven, Connecticut, has a vertical clearance in the closed position of 25 feet at mean high water and 31 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.213.

The owner of the bridge, the City of New Haven, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, replacing pinion couplings and brakes at the bridge.

Under this temporary deviation the Ferry Street Bridge may keep one lift span in the closed position from 8 a.m. on January 3, 2011 through 5 p.m. on January 6, 2011, and from 8 a.m. on January 10, 2011 through 5 p.m. on January 13, 2011. One lift span shall remain operational at all times.

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

Dated: December 17, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–33118 Filed 12–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1111]

RIN 1625–AA87

Security Zone; On the Waters in Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters south of Kapoho Point and a nearby channel in Kailua Bay within the Honolulu Captain of the Port (COTP) Zone. This security zone is necessary to ensure the safety of the President of the United States, members of his official party, and other senior government officials.

DATES: This rule is effective from 10 a.m. (HST) on December 21, 2010 through 8 p.m. (HST) on January 5, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket USCG–2010–1111 are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1111 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander Marcella Granquist, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone 808–842–2600, e-mail *Marcella.A.Granquist@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to

comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because the Captain of the Port Honolulu (COTP) did not become aware of the need for this temporary security zone in a timely manner to publish and seek comments on a proposed rule and consider those comments before issuing a rule that would be enforceable by December 21, 2010. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the President of the United States, members of his official party, and other senior government officials. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The COTP finds that this temporary security zone needs to be effective by December 21, 2010, to ensure the safety of the President of the United States, members of his official party, and senior government officials visiting the Kailua Bay area on the eastern coast of Oahu, Hawaii.

Background and Purpose

From December 21, 2010 through January 5, 2011, the President of the United States, members of his official party, and senior government officials will be residing near the Kailua Bay shoreline on Oahu, Hawaii. This position is located adjacent to U.S. navigable waters in the Honolulu Captain of the Port Zone. The Coast Guard is establishing this security zone to ensure the safety of the President of the United States, members of his official party, and senior government officials.

Discussion of Rule

This temporary security zone is effective from 10 a.m. HST on December 21, 2010 through 8 p.m. HST on January 5, 2011. It is located within the Honolulu Captain of the Port Zone (*See* 33 CFR 3.70–10) and covers all U.S. navigable waters in the Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 222° True to Namala Place Road; as well as the nearby channel from its entrance at Kapoho Point to a point 150 yards along the channel to the southwest of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21°25.6′ N, 157°45′ W, then extending the channel way to 21°25.6′ N, 157°44.6′ W, then all the waters extending to 21°25.5′ N, 157°44.4′ W (Kapoho Point) with all the waters to the west of a straight line to 21°25′ N, 157°44.6′ W (Namala Place), and then extending back to the original point 21°25′ N, 157°45′ W. Additionally, three (3) yellow buoys will be placed in proximity of the security zone along the east coastline and one (1) yellow buoy will be placed as visual aids for mariners and the public to approximate the zone.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel will be permitted to transit into or remain in the zone except for authorized support vessels, aircraft and support personnel, or other vessels authorized by the Captain of the Port or the District Commander. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and that the general public will be permitted to transit the security zone as necessary but will not be permitted to loiter.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little to no impact to small entities due to the narrow scope, nature of this security zone, and that the general public will be permitted to transit the security zone as necessary but will not be permitted to loiter. Additionally, before and during the effective period, the Coast Guard will issue verbal maritime advisories, and distribute a written notice to waterway users and online at *http://homeport.uscg.mil/honolulu.*

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because implementation of this security zone will not result in any: (1) Significant cumulative impacts on the human environment, (2) substantial controversy or substantial change to existing environmental conditions, (3) impacts which are more than minimal on properties under Section 106 of the National Historic Preservation Act, or (4) inconsistencies with any Federal, State, local laws or administrative determinations relating to the environment.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–215 to read as follows:

§ 165.T14–215 Security Zone; On the Waters in Kailua Bay, Oahu, HI.

(a) *Location.* The following area, within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor is a temporary security zone: All waters in Kailua Bay to the west of a line connecting the following points beginning at Kapoho Point and thence westward at a bearing of 222° True to the shoreline at Namala Place Road; in addition the adjacent channel beginning at Kapoho Point, and continuing thence to a point 150 yards down the channel way and ending southwest of the N. Kalaheo Avenue Road Bridge. This zone will include the navigable waters of the channel beginning at point 21°25′ N, 157°45′ W, then extending the channel way to 21°25.6′ N, 157°44.6′ W, then all the waters extending to 21°25.5′ N, 157°44.4′ W (Kapoho Point) with all the waters to the west of a straight line to 21°25′ N, 157°44.6′ W (Namala Place), and then extending back to the original point 21°25′ N, 157°45′ W.

(b) *Effective period.* This section is effective from 10 a.m. HST on December 21, 2010, through 8 p.m. HST on January 5, 2011.

(c) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Entry, transit, or anchoring within the security zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Honolulu or the District Commander.

(d) *Notice of enforcement.* The Captain of the Port Honolulu will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) *Authority to enforce.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the security zone described in this section.

(f) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application

of the security zone is unnecessary or impractical for the purpose of maritime security.

(g) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: December 16, 2010.

J.M. Nunan,

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

[FR Doc. 2010–33120 Filed 12–30–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0012; FRL–9246–3]

Approval and Promulgation of Implementation Plans; Texas; Emissions Banking and Trading of Allowances Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of four revisions to the Texas State Implementation Plan (SIP) that create and amend the Emissions Banking and Trading of Allowances (EBTA) Program. The EBTA Program establishes a cap and trade program to reduce emissions of oxides of nitrogen (NO_X) and sulfur dioxide (SO_2) from participating electric generating facilities. The Texas Commission on Environmental Quality (TCEQ) originally submitted the EBTA program to EPA as a SIP revision on January 3, 2000. Since that time, the TCEQ has submitted SIP revisions for the EBTA Program on September 11, 2000; July 15, 2002; and October 24, 2006. EPA has determined that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Act.

DATES: This final rule will be effective February 2, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0012. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's final rule, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

Table of Contents

I. What final action is EPA taking?
II. What is the background for this action?
III. What are EPA's responses to comments received on the proposed action?
IV. Statutory and Executive Order Reviews

I. What final action is EPA taking?

We are fully approving severable portions of four revisions to the Texas State Implementation Plan (SIP) that create and amend the Emissions Banking and Trading of Allowances (EBTA) Program. The EBTA Program establishes a cap and trade program to reduce emissions of oxides of nitrogen (NO_X) and sulfur dioxide (SO_2) from participating electric generating facilities. The TCEQ originally submitted the EBTA program to EPA as a SIP revision on January 3, 2000. Since that time, the TCEQ has submitted SIP revisions for the EBTA Program on September 11, 2000; July 15, 2002; and October 24, 2006.

EPA acted on the above SIP revisions through a direct final rulemaking and accompanying proposed rule action on November 16, 2010, at 75 FR 69884 and 75 FR 69909, respectively. In our direct final action we stated that we would withdraw our direct final approval if we received relevant adverse comments before December 16, 2010. Because EPA received one adverse comment, we withdrew our direct final action on December 15, 2010. As we discussed in our direct final and proposed rulemaking actions, we are proceeding with a final action and responding to the comments received in this notice. Today, we are approving the EBTA program and subsequent revisions as we proposed and find that they comply with the CAA and EPA regulations, are consistent with EPA policies, and will improve air quality. This final approval is being taken under parts C and D of the CAA.

II. What is the background for this action?

The TCEQ created the EBTA Program to implement the requirements of Texas Senate Bill 7 (SB 7), from the 76th Legislature, 1999, which deregulated the electric utility industry. Under Texas SB 7, TCEQ was required to develop a permitting system and a mass cap and trade system to distribute allowances for use by electric generating facilities. The EBTA program is designed to achieve a 50 percent reduction in NO_X emissions and a 25 percent reduction in SO_2 emissions, both based on 1997 heat input data, from participating sources. EPA has taken separate action on the permitting system required under Texas SB 7 and established at 30 TAC Chapter 116, Subchapter I (*See* docket EPA–R06–OAR–2005–TX–0031).

In our November 16, 2010, direct final action, we presented our evaluation of the EBTA program. Generally, SIP rules must be enforceable and must not relax existing requirements. *See* Clean Air Act sections 110(a), 110(l), and 193. EPA's review of the January 3, 2000; September 11, 2000; July 15, 2002; and October 24, 2006 SIP revisions finds that all 4 SIP submittals are consistent with the requirements at 40 CFR Part 51 and are considered complete SIP submittals in accordance with 40 CFR Part 51, Appendix V. This detailed analysis is available in the Technical Support Document (TSD) for this rulemaking. Additionally, we reviewed the EBTA program with respect to EPA's

Economic Incentive Program (EIP) Guidance "Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001) (EIP Guidance). Our analysis, as detailed in the TSD accompanying this rulemaking, finds that the EBTA program is consistent with the criteria for discretionary source specific emissions cap programs. The EBTA program will provide compliance flexibility to participating electric generating facilities in Texas and achieve the programmatic emission reduction goals of Texas SB 7. Further, EPA finds that the EBTA program is consistent with section 110(l) of the CAA and will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

III. What are EPA's responses to comments received on the proposed action?

EPA received one adverse comment on our proposed action, available in the docket. As discussed previously, because we received an adverse comment within the comment period, EPA withdrew our direct final rulemaking on December 15, 2010. We are proceeding with a separate final action on the EBTA program in this notice.

Comment 1: The comment EPA received states in its entirety: "No cap and trade other than through Congress!"

Response 1: The commenter did not provide any basis for why cap and trade should only be done through Congress or provide any specific comment on the EBTA program. There is nothing in the comment that convinces EPA that the EBTA program should not be approved. The Clean Air Act was enacted by Congress. 42 U.S.C.A. 7401. Under the Act, EPA is authorized to set clean air standards. 42 U.S.C.A. 7409. States are authorized to choose control strategies to meet these standards. 42 U.S.C.A. 7410(a). EPA can approve the strategies into State implementation plans, as long as the strategies are consistent with the Act. 42 U.S.C.A. 7410(l). As we stated in our proposal, and in section II of this notice, EPA finds the EBTA program to be consistent with the Act. EPA is making no changes to our proposed action as a result of this comment.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 21, 2010.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended by adding a new centered heading titled "Division 2—Emissions Banking and Trading of Allowances" immediately after the entry for Section 101.311 under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, followed by new entries for sections 101.330, 101.331, 101.332, 101.333, 101.334, 101.335, 101.336, 101.338 and 101.339.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter H—Emissions Banking and Trading				
*	*	*	*	*
Section 101.311	Program Audits and Reports	11/10/04	9/6/06, 71 FR 52698.	
Division 2—Emissions Banking and Trading of Allowances				
Section 101.330	Definitions	12/16/1999	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.331	Applicability	12/16/1999	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.332	General Provisions	12/16/1999	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.333	Allocation of Allowances	08/09/2000	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.334	Allowance Deductions	12/16/1999	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.335	Allowance Banking and Trading	12/16/1999	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.336	Emission Monitoring, Compliance Demonstration, and Reporting.	12/16/1999	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.338	Emission Reductions Achieved Outside the United States.	10/04/2006	1/3/2011 [Insert *FR* page number where document begins].	
Section 101.339	Program Audits and Reports	10/04/2006	1/3/2011 [Insert *FR* page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–32968 Filed 12–30–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

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

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Montgomery (FEMA Docket No.: B–1107).	City of Montgomery (10–04–0501P).	January 5, 2010; January 12, 2010; *Montgomery Advertiser.*	The Honorable Todd Strange, Mayor, City of Montgomery, 103 North Perry Street, Room 206, Montgomery, AL 36104.	December 28, 2009	010174
St. Clair (FEMA Docket No.: B–1102).	Unincorporated areas of St. Clair County (09–04–6331P).	December 24, 2009; December 31, 2009; *The St. Clair News-Aegis.*	Mr. Stanley Batemon, Chairman, St. Clair County Commission, 165 5th Avenue, Suite 100, Ashville, AL 35953.	April 30, 2010	010290
Arizona:					
Pima (FEMA Docket No.: B–1102).	Town of Marana (08–09–1811P).	October 9, 2009; October 16, 2009; *Daily Territorial.*	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	January 19, 2010	040118
Pima (FEMA Docket No.: B–1102).	Town of Marana (09–09–0980P).	September 21, 2009; September 28, 2009; *Daily Territorial.*	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	January 26, 2010	040118
Pima (FEMA Docket No.: B–1099).	Town of Oro Valley (08–09–1800P).	December 11, 2009; December 18, 2009; *Daily Territorial.*	The Honorable Paul H. Loomis, Mayor, Town of Oro Valley, 11000 North La Canada Drive, Oro Valley, AZ 85737.	April 19, 2010	040109
Pima (FEMA Docket No.: B–1102).	Town of Oro Valley (08–09–1811P).	October 9, 2009; October 16, 2009; *Daily Territorial.*	The Honorable Paul H. Loomis, Mayor, Town of Oro Valley, 11000 North La Canada Drive, Oro Valley, AZ 85737.	January 19, 2010	040109
Pima (FEMA Docket No.: B–1102).	Unincorporated areas of Pima County (08–09–1811P).	October 9, 2009; October 16, 2009; *Daily Territorial.*	The Honorable Richard Elias, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	January 19, 2010	040073
Pima (FEMA Docket No.: B–1099).	City of Tucson (09–09–0492P).	December 9, 2009; December 16, 2009; *Arizona Daily Star.*	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, AZ 85726.	April 15, 2010	040076
Yuma (FEMA Docket No.: B–1102).	Unincorporated areas of Yuma County (09–09–1722P).	December 21, 2009; December 28, 2009; *Yuma Sun.*	The Honorable Gregory S. Ferguson, Chairman, Yuma County Board of, Supervisors, 198 South Main Street, Yuma, AZ 85364.	December 7, 2009	040099
Arkansas:					
Benton (FEMA Docket No.: B–1102).	Town of Bethel Heights (09–06–1075P).	January 6, 2010; January 13, 2010; *Arkansas Democrat-Gazette.*	The Honorable Fred Jack, Mayor, Town of Bethel Heights, 530 Sunrise Drive, Bethel Heights, AR 72764.	May 13, 2010	050386
Benton (FEMA Docket No.: B–1102).	City of Lowell (09–06–1075P).	January 6, 2010; January 13, 2010; *Arkansas Democrat-Gazette.*	The Honorable Perry Long, Mayor, City of Lowell, 216 North Lincoln Street, Lowell, AR 72745.	May 13, 2010	050342
Crawford (FEMA Docket No.: B–1121).	City of Alma (09–06–2913P).	February 10, 2010; February 17, 2010; *Alma Journal.*	The Honorable John R. Ballentine, Mayor, City of Alma, 804 Fayetteville Avenue, Alma, AR 72921.	January 28, 2010	050236
St. Francis (FEMA Docket No.: B–1099).	City of Forrest City (09–06–1699P).	December 9, 2009; December 16, 2009; *Forrest City Times-Herald.*	The Honorable Gordon McCoy, Mayor, City of Forrest City, 224 North Rosser Street, Forrest City, AR 72335.	April 15, 2010	050187
St. Francis (FEMA Docket No.: B–1099).	Unincorporated areas of St. Francis County (09–06–1699P).	December 9, 2009; December 16, 2009; *Forrest City Times-Herald.*	The Honorable Gary Hughes, St. Francis County Judge, 313 South Izard Street, Forrest City, AR 72335.	April 15, 2010	050184
California:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Contra Costa (FEMA Docket No.: B–1099).	City of Concord (09–09–1576P).	December 4, 2009; December 11, 2009; *Contra Costa Times*.	The Honorable Laura M. Hoffmeister, Mayor, City of Concord, 1950 Parkside Drive, Concord, CA 94519.	April 12, 2010	065022
Santa Clara (FEMA Docket No.: B–1102).	City of San Jose (10–09–0251P).	January 5, 2010; January 12, 2010; *San Jose Mercury News*.	The Honorable Chuck Reed, Mayor, City of San Jose, 200 East Santa Clara Street, San Jose, CA 95113.	December 29, 2009	060349
Colorado:					
Eagle (FEMA Docket No.: B–1121).	Unincorporated areas of Eagle County (09–08–0907P).	January 28, 2010; February 4, 2010; *The Eagle Valley Enterprise*.	The Honorable Peter Runyon, Chairman, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	June 4, 2010	080051
El Paso (FEMA Docket No.: B–1099).	City of Colorado Springs (09–08–0730P).	December 23, 2009; December 30, 2009; *The Gazette*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	April 29, 2010	080060
Larimer (FEMA Docket No.: B–1121).	City of Fort Collins (09–08–0465P).	February 8, 2010; February 15, 2010; *Fort Collins Coloradoan*.	The Honorable Doug Hutchinson, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.	February 24, 2010	080102
Larimer (FEMA Docket No.: B–1121).	Unincorporated areas of Larimer County (09–08–0465P).	February 8, 2010; February 15, 2010; *Fort Collins Coloradoan*.	The Honorable Steve Johnson, Chair Pro-Tem, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	February 24, 2010	080101
Colorado: Larimer (FEMA Docket No.: B–1107).	City of Loveland (09–08–0734P).	January 15, 2010; January 22, 2010; *Daily Reporter-Herald*.	The Honorable Cecil Gutierrez, Mayor, City of Loveland, 500 East 3rd Street, Suite 330, Loveland, CO 80537.	May 24, 2010	080103
Montrose (FEMA Docket No.: B–1107).	Unincorporated areas of Montrose County (09–08–0799P).	December 3, 2009; December 10, 2009; *Montrose Daily Press*.	The Honorable David White, Chairman, Montrose County Board of Commissioners, 161 South Townsend Avenue, Montrose, CO 81401.	April 9, 2010	080124
Summit (FEMA Docket No.: B–1107).	Town of Breckenridge (09–08–0933P).	January 29, 2010; February 5, 2010; *Summit County Journal*.	The Honorable John Warner, Mayor, Town of Breckenridge, 150 Ski Hill Road, Breckenridge, CO 80424.	June 7, 2010	080172
Florida:					
Collier (FEMA Docket No.: B–1121).	City of Marco Island (09–04–7821P).	February 19, 2010; February 26, 2010; *Naples Daily News*.	Mr. Stephen T. Thompson, Marco Island City Manager, 50 Bald Eagle Drive, Marco Island, FL 34145.	February 9, 2010	120426
Hillsborough (FEMA Docket No.: B–1102).	Unincorporated areas of Hillsborough County (09–04–6011P).	January 4, 2010; January 11, 2010; *The Tampa Tribune*.	Mr. Michael Merrill, Hillsborough County Administrator, 601 E. Kennedy Boulevard, 26th Floor, Tampa, FL 33602.	January 22, 2010	120112
Hillsborough (FEMA Docket No.: B–1107).	Unincorporated areas of Hillsborough County (09–04–6115P).	January 14, 2010; January 21, 2010; *The Tampa Tribune*.	Mr. Michael Merrill, Hillsborough County Administrator, 601 E. Kennedy Boulevard, 26th Floor, Tampa, FL 33602.	May 21, 2010	120112
Lake (FEMA Docket No.: B–1102).	Unincorporated areas of Lake County (09–04–4297P).	January 4, 2010; January 11, 2010; *Daily Commercial*.	The Honorable Welton G. Cadwell, Chairman, Lake County Board of Commissioners, P.O. Box 7800, Tavares, FL 32778.	May 11, 2010	120421
Orange (FEMA Docket No.: B–1107).	Unincorporated areas of Orange County (09–04–6043P).	January 14, 2010; January 21, 2010; *Orlando Weekly*.	The Honorable Richard T. Crotty, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	May 21, 2010	120179
Orange (FEMA Docket No.: B–1121).	Unincorporated areas of Orange County (09–04–6911P).	January 28, 2010, February 4, 2010, *Orlando Weekly*.	The Honorable Richard T. Crotty, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	January 19, 2010	120179
Pinellas (FEMA Docket No.: B–1107).	City of Gulfport (09–04–6868P).	January 29, 2010; February 5, 2010; *St. Petersburg Times*.	The Honorable Mike Yakes, Mayor, City of Gulfport, 2401 53rd Street South, Gulfport, FL 33707.	January 20, 2010	125108
Pinellas (FEMA Docket No.: B–1107).	Unincorporated areas of Pinellas County (09–04–6868P).	January 29, 2010; February 5, 2010; *St. Petersburg Times*.	The Honorable Karen Williams Seel, Chairman, Pinellas County Board of Commissioners, 315 Court Street, Clearwater, FL 33756.	January 20, 2010	125139
Sarasota (FEMA Docket No.: B–1099).	City of Sarasota (09–04–6869P).	December 9, 2009; December 16, 2009; *Sarasota Herald-Tribune*.	The Honorable Richard Clapp, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	April 15, 2010	125150
Georgia:					
Cobb (FEMA Docket No.: B–1107).	City of Marietta (09–04–6328P).	January 8, 2010; January 15, 2010; *Marietta Daily Journal*.	The Honorable William B. Dunaway, Mayor, City of Marietta, P.O. Box 609, Marietta, GA 30061.	February 2, 2010	130226
Cobb (FEMA Docket No.: B–1107).	Unincorporated areas of Cobb County (09–04–6328P).	January 8, 2010; January 15, 2010; *Marietta Daily Journal*.	The Honorable Samuel S. Olens, Chairman, Cobb County Board of Commissioners, 100 Cherokee Street, Marietta, GA 30090.	February 2, 2010	130052

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Forsyth (FEMA Docket No.: B–1107).	City of Cumming (09–04–5443P).	December 30, 2009; January 6, 2010; *Forsyth County News*.	The Honorable Henry Ford Gravitt, Mayor, City of Cumming, 100 Main Street, Cumming, GA 30040.	May 6, 2010	130236
Idaho:					
Canyon (FEMA Docket No.: B–1099).	City of Nampa (09–10–0166P).	December 3, 2009; December 10, 2009; *Idaho Press Tribune*.	The Honorable Tom Dale, Mayor, City of Nampa, 411 3rd Street South, Nampa, ID 83651.	December 29, 2009	160038
Canyon (FEMA Docket No.: B–1099).	Unincorporated areas of Canyon County (09–10–0166P).	December 3, 2009; December 10, 2009; *Idaho Press Tribune*.	The Honorable Kathryn Alder, Chairperson, Canyon County Board of Commissioners, 1115 Albany Street, Caldwell, ID 83605.	December 29, 2009	160208
Illinois:					
Kane (FEMA Docket No.: B–1102).	City of Elgin (09–05–2958P).	December 29, 2009; January 5, 2010; *Courier News*.	The Honorable Edward Schock, Mayor, City of Elgin, 150 Dexter Court, Elgin, IL 60120.	May 5, 2010	170087
Kane (FEMA Docket No.: B–1102).	Village of Hampshire (09–05–2792P).	December 22, 2009; December 29, 2009; *Kane County Chronicle*.	The Honorable Jeffrey Magnussen, President, Village of Hampshire, P.O. Box 457, Hampshire, IL 60140.	April 28, 2010	170327
Kane (FEMA Docket No.: B–1102).	Unincorporated areas of Kane County (09–05–2792P).	December 22, 2009; December 29, 2009; *Kane County Chronicle*.	The Honorable Karen McConnaughay, Chairman, Kane County Board of Commissioners, 719 South Batavia Avenue, Geneva, IL 60134.	April 28, 2010	170896
Kansas:					
Johnson (FEMA Docket No.: B–1107).	City of Lenexa (09–07–1009P).	January 20, 2010; January 27, 2010; *The Johnson County Sun*.	The Honorable Michael Boehm, Mayor, City of Lenexa, 12350 West 87th Street Parkway, Lenexa, KS 66215.	January 12, 2010	200168
Sedgwick (FEMA Docket No.: B–1102).	City of Park City (09–07–1605P).	January 4, 2010; January 11, 2010; *Wichita Eagle*.	The Honorable Emil Bergquist, Mayor, City of Park City, 6110 North Hydraulic, Park City, KS 67219.	May 11, 2010	200963
Sedgwick (FEMA Docket No.: B–1102).	Unincorporated areas of Sedgwick County (09–07–1605P).	January 4, 2010; January 11, 2010; *Wichita Eagle*.	The Honorable Kelly Parks, Chairman, Sedgwick County Board of Commissioners, 525 North Main Street, Suite 320, Wichita, KS 67203.	May 11, 2010	200321
Kentucky:					
Louisville-Jefferson County Metropolitan Government (FEMA Docket No.: B–1107).	Louisville-Jefferson County Metropolitan Government (10–04–0314P).	January 15, 2010; January 22, 2010; *The Courier Journal*.	The Honorable Jerry E. Abramson, Mayor, Louisville-Jefferson County Metropolitan Government, 527 West Jefferson Street, Louisville, KY 40202.	May 24, 2010	210120
Louisiana:					
Caddo (FEMA Docket No.: B–1102).	City of Shreveport (09–06–2855P).	January 4, 2010; January 11, 2010; *The Times*.	The Honorable Cedric Glover, Mayor, City of Shreveport, 505 Travis Street, Shreveport, LA 71101.	May 11, 2010	220036
Mississippi:					
Hinds (FEMA Docket No.: B–1107).	City of Jackson (09–04–5350P).	January 15, 2010; January 22, 2010; *The Clarion-Ledger*.	The Honorable Harvey Johnson, Mayor, City of Jackson, P.O. Box 17, Jackson, MS 39205.	December 31, 2009	280072
Missouri:					
Jasper (FEMA Docket No.: B–1107).	City of Joplin (09–07–0562P).	January 15, 2010; January 22, 2010; *The Joplin Globe*.	The Honorable Gary Shaw, Mayor, City of Joplin, 602 South Main Street, Joplin, MO 64801.	May 24, 2010	290183
Newton (FEMA Docket No.: B–1107).	Unincorporated areas of Newton County (09–07–0562P).	January 15, 2010; January 22, 2010; *The Joplin Globe*.	The Honorable Jerry Carter, Presiding Commissioner, Newton County Commission, 101 South Wood Street, Neosho, MO 64850.	May 24, 2010	290820
New Mexico:					
Bernalillo (FEMA Docket No.: B–1107).	City of Rio Rancho (09–06–1628P).	January 15, 2010; January 22, 2010; *The Albuquerque Journal*.	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	May 24, 2010	350146
Bernalillo (FEMA Docket No.: B–1107).	Unincorporated areas of Bernalillo County (09–06–1628P).	January 15, 2010; January 22, 2010; *The Albuquerque Journal*.	The Honorable Alan B. Armijo, Chairman, Bernalillo County Board, of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	May 24, 2010	350001
North Carolina:					
Dare (FEMA Docket No.: B–1123).	Town of Kill Devil Hills (09–04–6287P).	November 10, 2009; November 17, 2009; *The Coastland Times*.	The Honorable Raymond Sturza, Mayor, Town of Kill Devil Hills, P.O. Box 1719, Kill Devil Hills, NC 27948.	October 30, 2009	375353
Ohio:					
Lucas (FEMA Docket No.: B–1099).	Unincorporated areas of Lucas County (09–05–4565P).	December 2, 2009; December 9, 2009; *Toledo Blade*.	The Honorable Pete Gerken, Chairman, Lucas County Board of Commissioners, 1 Government Center, Suite 800, Toledo, OH 43604.	November 20, 2009	390359
Lucas (FEMA Docket No.: B–1099).	City of Toledo (09–05–4565P).	December 2, 2009; December 9, 2009; *Toledo Blade*.	The Honorable Carleton S. Finkbeiner, Mayor, City of Toledo, 1 Government Center, 640 Jackson Street, Suite 2200, Toledo, OH 43604.	November 20, 2009	395373

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lucas (FEMA Docket No.: B–1102).	City of Toledo (09–05–5298P).	January 6, 2010; January 13, 2010; *Toledo Blade*.	The Honorable Carleton S. Finkbeiner, Mayor, City of Toledo, 1 Government Center, 640 Jackson, Suite 2200, Toledo, OH 43604.	December 29, 2009	395373
Miami (FEMA Docket No.: B–1102).	City of Troy (09–05–3442P).	December 14, 2009; December 21, 2009; *Troy Daily News*.	The Honorable Michael Beamish, Mayor, City of Troy, 100 South Market Street, Troy, OH 45373.	December 30, 2009	390402
Montgomery (FEMA Docket No.: B–1102).	City of Moraine (08–05–1380P).	December 9, 2009; December 16, 2009; *Dayton Daily News*.	The Honorable Roger Mathney, Mayor, City of Moraine, 4200 Dryden Road, Moraine, OH 45439.	April 15, 2010	390414
Montgomery (FEMA Docket No.: B–1102).	City of West Carrollton (08–05–1380P).	December 9, 2009; December 16, 2009; *Dayton Daily News*.	The Honorable Jeffery W. Sanner, Mayor, City of West Carrollton, 300 East Central Avenue, West Carrollton, OH 45449.	April 15, 2010	390419
Oklahoma:					
Tulsa (FEMA Docket No.: B–1102).	City of Glenpool (09–06–0482P).	January 7, 2010; January 14, 2010; *Tulsa Daily Commerce & Legal News*.	The Honorable Shayne Buchanan, Mayor, City of Glenpool, P.O. Box 70, Glenpool, OK 74033.	December 30, 2009	400208
Tulsa (FEMA Docket No.: B–1102).	Unincorporated areas of Tulsa County (09–06–0482P).	January 7, 2010; January 14, 2010; *Tulsa Daily Commerce & Legal News*.	The Honorable Karen Keith, Chairwoman, Tulsa County Board of Commissioners, 500 South Denver, Tulsa, OK 74103.	December 30, 2009	400462
Oregon:					
Clackamas (FEMA Docket No.: B–1107).	City of Lake Oswego (09–10–0738P).	January 7, 2010; January 14, 2010; *Lake Oswego Review*.	The Honorable Jack Hoffman, Mayor, City of Lake Oswego, P.O. Box 369, Lake Oswego, OR 97034.	May 14, 2010	410018
Marion (FEMA Docket No.: B–1107).	City of Salem (09–10–0105P).	December 24, 2009; December 31, 2009; *Statesman Journal*.	The Honorable Janet Taylor, Mayor, City of Salem, 555 Liberty Street Southeast, Room 220, Salem, OR 97301.	April 30, 2010	410167
Pennsylvania:					
Chester (FEMA Docket No.: B–1102).	Borough of West Chester (09–03–1120P).	January 4, 2010; January 11, 2010; *Daily Local News*.	The Honorable Dick B. Yoder, Mayor, Borough of West Chester, 401 East Gay Street, West Chester, PA 19380.	December 24, 2009	420292
Chester (FEMA Docket No.: B–1121).	Township of West Whiteland (09–03–1797P).	January 29, 2010; February 5, 2010; *Daily Local News*.	The Honorable Diane Snyder, Chairman, West Whiteland Township Board of Supervisors, 101 Commerce Drive, Exton, PA 19341.	January 21, 2010	420295
Northampton (FEMA Docket No.: B–1102).	City of Bethlehem (09–03–1764P).	December 31, 2009; January 7, 2010; *Express-Times*.	The Honorable John B. Callahan, Mayor, City of Bethlehem, 10 East Church Street, Bethlehem, PA 18018.	December 22, 2009	420718
South Carolina:					
Lexington (FEMA Docket No.: B–1107).	Unincorporated areas of Lexington County (10–04–0151P).	January 14, 2010; January 21, 2010; *The Lexington County Chronicle*.	The Honorable Debra B. Summers, Chair, Lexington County Council, 212 South Lake Drive, Lexington, SC 29072.	May 21, 2010	450129
York (FEMA Docket No.: B–1099).	Unincorporated areas of York County (09–04–4239P).	December 3, 2009; December 10, 2009; *The Herald*.	The Honorable Houston "Buddy" Motz, Chairman, York County Board of Commissioners, 2047 Poinsett Drive, Rock Hill, SC 29732.	November 20, 2009	450193
Tennessee:					
Hamilton (FEMA Docket No.: B–1121).	City of Chattanooga (09–04–3516P).	February 12, 2010; February 19, 2010; *Chattanooga Times Free Press*.	The Honorable Ron Littlefield, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	January 29, 2010	470072
Maury (FEMA Docket No.: B–1121).	City of Spring Hill (09–04–2487P).	January 29, 2010; February 5, 2010; *The Daily Herald*.	The Honorable Michael Dinwiddie, Mayor, City of Spring Hill, P.O. Box 789, Spring Hill, TN 37174.	February 19, 2010	470278
Washington (FEMA Docket No.: B–1107).	City of Johnson City (09–04–5738P).	January 14, 2010; January 21, 2010; *Johnson City Press*.	Mr. M. Denis Peterson, City Manager, City of Johnson City, 601 East Main Street, Johnson City, TN 37601.	May 21, 2010	475432
Wilson (FEMA Docket No.: B–1102).	City of Lebanon (10–04–0682P).	January 8, 2010; January 15, 2010; *Lebanon Democrat*.	The Honorable Philip Craighead, Mayor, City of Lebanon, 200 North Castle Heights Avenue, Suite 100, Lebanon, TN 37087.	May 17, 2010	470208
Texas:					
Bexar (FEMA Docket No.: B–1107).	City of San Antonio (08–06–1091P).	January 15, 2010; January 22, 2010; *San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	May 24, 2010	480045
Brazoria (FEMA Docket No.: B–1102).	City of Angleton (08–06–2457P).	June 8, 2009; June 15, 2009; *The Facts*.	The Honorable J. Patrick Henry, Mayor, City of Angleton, 121 South Velasco Street, Angleton, TX 77515.	October 13, 2009	480064
Collin (FEMA Docket No.: B–1102).	City of Frisco (09–06–2567P).	January 8, 2010; January 15, 2010; *Frisco Enterprise*.	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	May 17, 2010	480134
Dallas (FEMA Docket No.: B–1099).	Unincorporated areas of Dallas County (09–06–2480P).	December 4, 2009; December 11, 2009; *Dallas Morning News*.	The Honorable Jim Foster, Dallas County Judge, 411 Elm Street, Suite 210, Dallas, TX 75202.	December 21, 2009	480165

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas (FEMA Docket No.: B–1099).	City of Wilmer (09–06–2480P).	December 4, 2009; December 11, 2009; *Dallas Morning News*.	The Honorable Jeff Steele, Mayor, City of Wilmer, 128 North Dallas Avenue, Wilmer, TX 75172.	December 21, 2009	480190
Denton (FEMA Docket No.: B–1121).	City of Fort Worth (09–06–2866P).	December 14, 2009; December 21, 2009; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	April 20, 2010	480596
Denton (FEMA Docket No.: B–1107).	City of Lewisville (09–06–2230P).	January 13, 2010; January 20, 2010; *Lewisville Leader*..	The Honorable Dean Ueckert, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	May 20, 2010	480195
Denton (FEMA Docket No.: B–1102).	City of Lewisville (09–06–0314P).	December 30, 2009; January 6, 2010; *Lewisville Leader*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	May 6, 2010	480195
Fort Bend (FEMA Docket No.: B–1099).	First Colony L.I.D. (10–06–0050P).	November 26, 2009; December 3, 2009; *Fort Bend Sun*.	Mr. Gary Knapp, Board President, First Colony L.I.D, c/o Allen Boone Humphries Robinson, LLP, 3200 Southwest Freeway, Suite 2600, Houston, TX 77027.	April 2, 2010	481583
Fort Bend (FEMA Docket No.: B–1099).	City of Missouri (09–06–0987P).	December 3, 2009; December 10, 2009; *Fort Bend Sun*.	The Honorable Allen Owen, Mayor, City of Missouri, 1522 Texas Parkway, Missouri, TX 77489.	April 9, 2009	480304
Fort Bend (FEMA Docket No.: B–1099).	City of Sugar Land (10–06–0050P).	November 26, 2009; December 3, 2009; *Fort Bend Sun*.	The Honorable James A. Thompson, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	April 2, 2010	480234
Fort Bend (FEMA Docket No.: B–1099).	Unincorporated areas of Fort Bend County (09–06–0987P).	December 3, 2009; December 10, 2009; *Fort Bend Sun*.	The Honorable Robert E. Hebert, PhD, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	April 9, 2010	480228
Fort Bend (FEMA Docket No.: B–1099).	Unincorporated areas of Fort Bend County (10–06–0050P).	November 26, 2009; December 3, 2009; *Fort Bend Sun*.	The Honorable Robert E. Hebert, PhD, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	April 2, 2010	480228
Harris (FEMA Docket No.: B–1107).	City of Houston (09–06–2519P).	January 14, 2010; January 21, 2010; *Houston Chronicle*.	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	December 31, 2009	480296
Harris (FEMA Docket No.: B–1107).	Unincorporated areas of Harris County (09–06–2519P).	January 14, 2010; January 21, 2010; *Houston Chronicle*.	The Honorable Edward J. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	December 31, 2009	480287
Harris (FEMA Docket No.: B–1099).	City of Pasadena (09–06–2867P).	December 2, 2009; December 9, 2009; *Pasadena Citizen*.	The Honorable John Isbell, Mayor, City of Pasadena, 1211 Southmore Avenue, Pasadena, TX 77502.	November 30, 2009	480307
Lubbock (FEMA Docket No.: B–1102).	City of Lubbock (08–06–2706P).	January 4, 2010; January 11, 2010; *Lubbock Avalanche-Journal*.	The Honorable Tom Martin, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457.	May 11, 2010	480452
Tarrant (FEMA Docket No.: B–1118).	City of Hurst (09–06–2085P).	December 18, 2008, December 25, 2009; *Star-Telegram*.	The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	April 26, 2010	480601
Tarrant (FEMA Docket No.: B–1121).	City of North Richland Hills (09–06–0903P).	December 14, 2009; December 21, 2009; *Star-Telegram*.	The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 North East Loop 820, North Richland Hills, TX 76180.	December 30, 2009	480607
Travis (FEMA Docket No.: B–1102).	City of Austin (09–06–2275P).	January 8, 2010; January 15, 2010; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	May 17, 2010	480624
Travis (FEMA Docket No.: B–1107).	City of Pflugerville (09–06–2902P).	January 14, 2010; January 21, 2010; *Pflugerville Pflag*.	The Honorable Jeff Coleman, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	December 31, 2009	481028
Utah:					
Washington (FEMA Docket No.: B–1099).	City of St. George (09–08–0868P).	December 4, 2009; December 11, 2009; *The Spectrum*.	The Honorable Daniel D. McArthur, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	April 12, 2010	490177
Virginia:					
City of Newport News (FEMA Docket No.: B–1102).	City of Newport News (09–03–1019P).	December 24, 2009; December 31, 2009; *Daily Press*.	The Honorable Joe S. Frank, Mayor, City of Newport News, 2400 Washington Avenue, Newport News, VA 23607.	April 30, 2010	510103
City of Lynchburg (FEMA Docket No.: B–1107).	City of Lynchburg (09–03–1318P).	January 15, 2010; January 22, 2010; *News & Advance*.	The Honorable Joan F. Foster, Mayor, City of Lynchburg, 900 Church Street, Lynchburg, VA 24504.	December 31, 2009	510093
Washington:					
King (FEMA Docket No.: B–1121).	City of Snoqualmie (08–10–0665P).	February 5, 2010; February 12, 2010; *The Seattle Times*.	The Honorable Matt Larson, Mayor, City of Snoqualmie, P.O. Box 987, Snoqualmie, WA 98065.	February 26, 2010	530090
King (FEMA Docket No.: B–1121).	Unincorporated areas of King County (08–10–0665P).	February 5, 2010; February 12, 2010; *The Seattle Times*.	The Honorable Dow Constantine, Chairman, King County Board of Commissioners, 516 3rd Avenue, Room 1200, Seattle, WA 98104.	February 26, 2010	530071

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wisconsin:					
Waukesha (FEMA Docket No.: B–1121).	Village of Elm Grove (09–05–5085P).	January 14, 2010; January 21, 2010; *Waukesha Freeman.*	The Honorable Neil Palmer, President, Village of Elm Grove, 13600 Juneau Boulevard, Elm Grove, WI 53122.	February 5, 2010	550578
Wyoming:					
Campbell (FEMA Docket No.: B–1102).	Unincorporated areas of Campbell County (09–08–0286P).	January 4, 2010; January 11, 2010; *The News-Record.*	The Honorable Dan Coolidge, Chairman, Campbell County Board of Commissioners, 901 Fairway Drive, Gillette, WY 82718.	May 11, 2010	560081
Campbell (FEMA Docket No.: B–1102).	City of Gillette (09–08–0286P).	January 4, 2010; January 11, 2010; *The News-Record.*	The Honorable Duane Evenson, Mayor, City of Gillette, 1411 West 4th Street, Gillette, WY 82716.	May 11, 2010	560007

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

Dated: December 22, 2010.

Edward Connor,

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

[FR Doc. 2010–33098 Filed 12–30–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1143]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Idaho:					
Valley	Unincorporated areas of Valley County (10–10–0010P).	April 15, 2010; April 22, 2010; *The Star-News*.	The Honorable Jerry Winkle, Valley County Commissioner, P.O. Box 1350, Cascade, ID 83611.	August 21, 2010	160220
Indiana: Hamilton	City of Noblesville (10–05–3162P).	April 15, 2010; April 22, 2010; *Indianapolis Star*.	The Honorable John Ditslear, Mayor, City of Noblesville, 16 South 10th Street, Suite 150, Noblesville, IN 46060.	August 20, 2010	180082
Wisconsin:					
Green Lake	Village of Marquette (10–05–1858P).	April 8, 2010; April 15, 2010; *The Berlin Journal Newspaper*.	Mr. Howard Sell, District 6, County Board Supervisor, N3415 State Highway 73, Markesan, WI 53946.	March 29, 2010	550170
Waukesha	Unincorporated areas of Waukesha County (10–05–0806P).	April 29, 2010; May 6, 2010; *Milwaukee Journal Sentinel* and *Lake County Reporter*.	Mr. Daniel P. Vrakas, County Executive, 515 West Moreland Boulevard, Room 230, Waukesha, WI 53188.	September 3, 2010	550476
Jefferson	Unincorporated areas of Jefferson County (10–05–0806P).	April 29, 2010; May 6, 2010; *Daily Jefferson County Union*.	Ms. Sharon L. Schmeling, County Board Chairperson, 320 South Main Street, Room 201, Jefferson, WI 53549.	September 3, 2010	550191
Waukesha	Unincorporated areas of Waukesha County (10–05–0802P).	April 29, 2010; May 6, 2010; *Lake County Reporter* and *Milwaukee Journal Sentinel*.	Mr. Daniel P. Vrakas, County Executive, 515 West Moreland Boulevard, Room 320, Waukesha, WI 53188.	September 3, 2010	550476
Michigan:					
Oakland	City of Novi (10–05–0812P).	May 6, 2010; May 13, 2010; *Novi News*.	The Honorable David Landry, Mayor, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375.	May 24, 2010	260175
Wisconsin:					
Dane	Village of Black Earth (10–05–1272P).	May 20, 2010; May 27, 2010; *News-Sickle-Arrow*.	The Honorable Patrick Troge, President, Village of Black Earth, 1525 Riverview Drive, Black Earth, WI 53515.	September 24, 2010	550079
Dane	Unincorporated areas of Dane County (10–05–1272P).	May 20, 2010; May 27, 2010; *The Wisconsin State Journal*.	Kathleen Falk, County Executive, 210 Martin Luther King Jr. Boulevard, Room 116, City-County Building, Madison, WI 53703.	September 24, 2010	550077
Massachusetts:					
Barnstable	Town of Falmouth (09–01–1590P).	May 21, 2010; May 28, 2010; *Falmouth Enterprise*.	Mr. Robert L. Whritenour, Jr., Town of Falmouth Manager, 59 Town Hall Square, Falmouth, MA 02540.	August 26, 2010	255211
Wisconsin:					
St. Croix	City of River Falls (10–05–1230P).	May 27, 2010; June 3, 2010; *River Falls Journal*.	The Honorable Don Richards, Mayor, City of River Falls, 106 North Wasson Lane, River Falls, WI 54022.	October 1, 2010	550330
St. Croix	Unincorporated areas of St. Croix County (10–05–1230P).	May 27, 2010; June 3, 2010; *River Falls Journal*.	Mr. Daryl Standafer, St. Croix County Chairman, 1101 Carmichael Road Hudson, WI 54016.	October 1, 2010	555578
Iowa:					
Polk	City of Des Moines (09–07–1717P).	May 27, 2010; June 3, 2010; *Des Moines Register*.	The Honorable Franklin Cownie, Mayor, City of Des Moines, 675 Harwood Drive, Des Moines, IA 50312.	October 1, 2010	190227
Idaho:					
Ada	Unincorporated areas of Ada County (10–10–0170P).	May 27, 2010; June 3, 2010; *The Idaho Statesman*.	The Honorable Fred Tilman, Ada County Commissioner, 200 West Front Street, Boise, ID 83702.	September 1, 2010	160001
Indiana:					
Tippecanoe	City of Lafayette (10–05–3321P).	May 27, 2010; June 3, 2010; *Journal and Courier*.	The Honorable Tony Roswarski, Mayor, City of Lafayette, 20 North 6th Street, Lafayette, IN 47901.	May 18, 2010	180253
Nebraska:					
Lancaster	City of Lincoln (10–07–0761P).	June 3, 2010; June 10, 2010; *The Lincoln Journal-Star*.	The Honorable Chris Beutler, Mayor, City of Lincoln, 555 South 10th Street, Suite 301, Lincoln, NE 68508.	October 8, 2010	315273
Virginia:					
City of Fairfax	City of Fairfax (10–03–0412P).	June 14, 2010; June 21, 2010; *The Washington Times*.	The Honorable Robert F. Lederer, Mayor, City of Fairfax, 10455 Armstrong Street, Fairfax, VA 22030.	October 19, 2010	515524
Vermont:					
Windham	Town of Wilmington (10–01–0925P).	June 14, 2010; June 21, 2010; *Brattleboro Reformer*.	The Honorable Thomas P. Consolino, Chair, Selectboard, P.O. Box 217 Wilmington, VT 05363.	June 2, 2010	500142
Windham	Town of Wilmington (10–01–0925P).	June 17, 2010; June 24, 2010; *The Deerfield Valley News*.	The Honorable Thomas P. Consolino, Chair, Selectboard P.O. Box 217 Wilmington, VT 05363.	June 2, 2010	500142
New Hampshire:					
Hillsborough	Town of Pelham (09–01–1526P).	June 18, 2010; June 25, 2010; *The Lowell Sun*.	The Honorable Douglas Viger, Chairman, Board Selectman, 6 Village Green, Pelham, NH 03076.	July 6, 2010	330100

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hillsborough	Town of Pelham (09–01–1526P).	June 21, 2010; June 28, 2010; *The Pelham-Windham News.*	The Honorable Douglas Viger, Chairman, Board Selectman, 6 Village Green, Pelham, NH 03076.	July 6, 2010	330100
Kansas:					
Johnson	City of Overland Park (09–07–1710P).	June 30, 2010; July 7, 2010; *Sun Publications.*	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	June 17, 2010	200174
Maine:					
Cumberland	Town of Harpswell (09–01–1532P).	July 12, 2010; July 19, 2010; *The Times-Record.*	The Honorable James S. Henderson, Chairman, Board of Selectman, P.O. Box 39, Harpswell, ME 04079.	June 24, 2010	230169
Michigan:					
Macomb	Township of Washington (10–05–4289P).	July 7, 2010; July 14, 2010; *The Romeo Observer.*	Mr. Dan O'Leary, Board Supervisor, 57900 Van Dyke Road, Washington, MI 48094.	June 29, 2010	260447
Missouri:					
Cole	City of Jefferson City (10–07–0593P).	July 8, 2010; July 15, 2010; *News-Tribune.*	The Honorable John Landwehr, Mayor, City of Jefferson City, 320 East McCarty Street, Jefferson City, MO 65101.	December 24, 2010	290108
Iowa:					
Black Hawk	City of Cedar Falls (10–07–0506P).	July 8, 2010; July 15, 2010; *The Waterloo Courier.*	The Honorable Jon Crews, Mayor, Cedar Falls, 220 Clay Street, Cedar Falls, IA 50613.	November 12, 2010	190017
Maine:					
York	Town of Holis (10–01–0538P).	July 13, 2010; July 20, 2010; *The Smart Shopper.*	Mr. Stuart B. Gannett, Sr., Chairman, Board of Selectman, 34 Town Farm Road, Hollis, ME 04042.	November 17, 2010	230150

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

Dated: December 22, 2010.

Edward Connor,

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

[FR Doc. 2010–33103 Filed 12–30–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to correct the clause list and associated clause dates in the clause "Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items."

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to add Alternate II in paragraph (b)(11)(iii) and to correct clause dates in paragraphs (b)(11) and (b)(14) of the clause at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. These errors occurred as a result of the final rule DFARS Case 2009–D012, published in the **Federal Register** on December 29, 2010.

List of Subjects in 48 CFR Part 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Amend section 252.212–7001 as follows:

252.212–7001 [Amended]

■ a. Revise the clause date in paragraph (b)(11)(i) by removing "(DEC 2010)" and adding in its place "(NOV 2009)";

■ b. Revise the clause date in paragraph (b)(11)(ii) by removing "(DEC 2010)" and adding in its place "(SEP 2008)";

■ c. Add paragraph (b)(11)(iii);

■ d. Revise the clause date in paragraph (b)(14)(i) by removing "(JUL 2009)" and adding in its place "(DEC 2010)"; and

■ e. Revise the clause date in paragraph (b)(14)(ii) by removing "(DEC 2010)" and adding in its place "(JUL 2009)";

The revision reads as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

(11) * * *

(iii) ____ Alternate II (DEC 2010) of 252.225–7001.

* * * * *

[FR Doc. 2010–33092 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XZ61

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Pacific cod among multiple sectors in the Bering Sea and Aleutian Islands management area. These actions are necessary to allow the 2010 total allowable catch of Pacific cod to be harvested.

DATES: Effective December 28, 2010, until 2400 hours, A.l.t., December 31, 2010.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The 2010 Pacific cod total allowable catch (TAC) in the BSAI is 168,780 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010). Pursuant to § 679.20(a)(7)(ii)(A), the allocations of the Pacific cod TAC are 73,000 mt to hook-and-line catcher/processors, 2,248 mt to pot catcher/processors, 300 mt to catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line gear, 12,591 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 3,319 mt to the Amendment 80 limited access sector. The allocation to American Fisheries Act (AFA) trawl catcher/processors is 4,067 mt after one reallocation on September 9, 2010 (75 FR 55690, September 14, 2010). The allocation to catcher vessels using trawl gear is 28,809 mt after two reallocations on August 27, 2010 (75 FR 52478, August 26, 2010) and September 9, 2010 (75 FR 55690, September 14, 2010). The allocation to jig gear is 510 mt after two reallocations on March 17, 2010 (75 FR 13444, March 22, 2010) and April 12, 2010 (75 FR 19562, April 15, 2010). The allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear is 5,098 after three reallocations on March 17, 2010 (75 FR 13444, March 22, 2010), April 12, 2010 (75 FR 19562, April 15, 2010), and August 27, 2010 (75 FR 52478, August 26, 2010).

First, as of December 23, 2010, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that vessels using jig gear will not be able to harvest 160 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii) and subsequent reallocations. Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 160 mt of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Second, as of December 23, 2010, the Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear will not be able to harvest 299 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 251 mt of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear and 48 mt of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear.

Third, as of December 23, 2010, the Regional Administrator has determined that AFA trawl catcher/processors will not be able to harvest 26 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A) and subsequent reallocations. Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 26 mt of Pacific cod from AFA trawl catcher/processors to the Amendment 80 limited access sector.

Fourth, as of December 23, 2010, the Regional Administrator has determined that trawl catcher vessels will not be able to harvest 634 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A) and subsequent reallocations. The Regional Administrator has also determined that the projected unharvested amount is unlikely to be harvested by any of the other catcher vessel sectors described in § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 405 mt of Pacific cod from trawl catcher vessels to the Amendment 80 limited access sector, 190 mt of Pacific cod from trawl catcher vessels to hook-and-line catcher/processors, 33 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 6 mt to pot catcher/processors.

Finally, as of December 23, 2010, the Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear will not be able to harvest 1,096 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A) and subsequent reallocations. Therefore, in accordance with § 679.20(a)(7)(iii)(C), NMFS apportions 1,096 mt of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear to pot catcher/processors.

The allocations for Pacific cod specified in the final 2010 and 2011 final harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and reallocations on March 17, 2010 (75 FR 13444, March 22, 2010), April 12, 2010 (75 FR 19562, April 15, 2010), August 27, 2010 (75 FR 52478, August 26, 2010), and September 9, 2010 (75 FR 55690, September 14, 2010) are revised as follows: 4,041 mt to AFA catcher/processors using trawl gear, 3,750 mt to the Amendment 80 limited access sector, 28,175 mt to catcher vessels using trawl gear, 1 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear, 11,576 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, 5,509 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, 350 mt to vessels using jig gear, 3,350 mt to pot catcher/processors, and 73,190 mt to hook-and-line catcher/processors.

This will enhance the socioeconomic well-being of harvesters dependent upon Pacific cod in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Pacific cod by the applicable BSAI sectors and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in the sectors participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant

Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 23, 2010.

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

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

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

Dated: December 28, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–33089 Filed 12–28–10; 4:15 pm]

BILLING CODE 3510–22–P

Federal Register

Monday,
January 3, 2011

Part II

Department of Energy

10 CFR Part 1021

National Environmental Policy Act Implementing Procedures; Proposed Rule

DEPARTMENT OF ENERGY

[Docket ID: DOE–HQ–2010–0002]

10 CFR Part 1021

RIN 1990–AA34

National Environmental Policy Act Implementing Procedures

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The majority of the changes are proposed for the categorical exclusions provisions contained in its NEPA Implementing Procedures, with a small number of related changes proposed for other provisions. These proposed changes are intended to better align the Department's regulations, particularly its categorical exclusions, with DOE's current activities and recent experiences, and to update the provisions with respect to current technologies and regulatory requirements. DOE proposes to establish 20 new categorical exclusions, and to remove two categorical exclusion categories, one environmental assessment (EA) category, and two environmental impact statement (EIS) categories. Other proposed changes modify and clarify DOE's existing provisions.

DATES: Comments should be received by (or, if mailed, postmarked by) February 17, 2011 to ensure consideration. Late comments may be considered to the extent practicable. DOE will hold a public hearing on February 4, 2011, from 1 p.m. to 4 p.m. in Washington, DC. Persons who wish to speak at the public hearing should register before 3 p.m. on February 1, 2011, as described in **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Documents relevant to this rulemaking are posted at *http://www.regulations.gov* (Docket ID: DOE–HQ–2010–0002). Documents posted to this docket include: This notice of proposed rulemaking, DOE's "Technical Support Document" that provides additional information regarding certain proposed changes, and a "redline/strikeout" (markup) file of affected sections of the DOE NEPA regulations indicating the changes proposed in this proposed rule.

Submit comments, labeled "DOE NEPA Implementing Procedures, RIN 1990–AA34," by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments electronically. This rulemaking is assigned Docket ID: DOE–HQ–2010–0002. Comments may be entered directly on the Web site. Electronic files may be submitted to this Web site.

2. *Mail:* Mail comments to NEPA Rulemaking Comments, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Because security screening may delay mail sent through the U.S. Postal Service, DOE encourages electronic submittal of comments.

3. *Public Hearing:* A public hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. Oral and written comments will be accepted at the public hearing. *See* **DATES,** above, and Section III, Invitation to Comment, below, for procedures.

FOR FURTHER INFORMATION CONTACT: For general information about DOE's NEPA procedures, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at 202–586–4600 or leave a message at 800–472–2756. To register to speak at the public hearing and for questions concerning how to comment on this proposed rule, contact Ms. Yardena Mansoor, Office of NEPA Policy and Compliance, at *askNEPA@hq.doe.gov* or 202–586–9326. For detailed information on submitting comments and the public hearing, *see* Section III, Invitation to Comment, below.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

What is NEPA?

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the potential environmental impacts of their "proposed actions" before taking action. (Please note the terms "effects" and "impacts" as used in this proposed rule are synonymous. *See* 40 CFR 1508.8.) Proposed actions include actions directly undertaken by a Federal agency, as well as certain actions undertaken by a State, local, or private entity with Federal involvement, *e.g.,* certain projects that may receive Federal funding, permits, or other support.

What is environmental review under NEPA?

The Council on Environmental Quality's (CEQ's) NEPA implementing regulations (40 CFR parts 1500–1508) establish three levels of review for proposed actions—EIS, EA, and categorical exclusion determinations—each involving different levels of information and analysis. An EIS is a detailed analysis of the potential environmental impacts of a proposed action (and alternatives) that may have a significant impact on the environment. *See* NEPA Section 102(2)(C), 42 U.S.C. 4332(2)(C); 40 CFR 1508.11. An EA is a briefer analysis conducted to determine whether a proposed action may have a significant impact on the environment and thus whether an EIS is required. *See* 40 CFR 1508.9. A categorical exclusion is a class of actions that a Federal agency has determined do not, absent extraordinary circumstances, individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an EA nor an EIS is required. *See* 40 CFR 1508.4. A categorical exclusion determination is made when an agency finds that a proposed action fits within a categorical exclusion and meets other applicable requirements, such as the absence of extraordinary circumstances.

How does DOE establish categorical exclusions?

DOE establishes categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that they normally will not have significant environmental impacts, individually or cumulatively. DOE establishes categorical exclusions based on its experience, the experience of other agencies, and information provided by the public.

A complete list of DOE's current categorical exclusions can be found at 10 CFR part 1021, subpart D, appendices A and B. Appendix A lists categorical exclusions applicable to general agency actions (for example, routine administrative, financial, and personnel actions). Appendix B lists categorical exclusions that are applicable to specific agency actions.

How does DOE make a categorical exclusion determination?

Under the regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with 10 CFR 1021.410(b) that: (1) The proposed action fits within

a class of actions listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental impacts of the proposed action, and (3) there are no connected or related actions with cumulatively significant impacts and, as appropriate, the proposed action is not precluded as an impermissible interim action (40 CFR 1506.1 and 10 CFR 1021.211).

In addition, to fit within a class of actions in appendix B, a proposed action must satisfy certain conditions known as "integral elements" (appendix B, paragraphs (1) through (4)). Briefly, these conditions ensure that an excluded action would not have the potential to cause significant environmental impacts due to, for example, a threatened violation of applicable environmental, safety, and health requirements, or by disturbing hazardous substances such that there would be uncontrolled or unpermitted releases.

What does DOE propose to change in its NEPA regulations?

With this proposed rule, DOE proposes to update its NEPA regulations (10 CFR part 1021), primarily with changes to subpart D and with a few changes to subpart C. Most changes are to categorical exclusions (subpart D, appendices A and B, discussed in Sections IV.D and IV.E below, respectively), including establishing new categorical exclusions and modifying existing categorical exclusions. DOE also proposes to make changes to its classes of actions that normally require an EA (appendix C, discussed in Section IV.F) or EIS (appendix D, discussed in Section IV.G). In addition, DOE proposes to change several procedural provisions of the Department's regulations (Section IV.C) and modify wording for consistency and clarity (Section IV.B).

II. Purpose and Development of the Proposed Changes

Why does DOE propose to amend its NEPA implementing procedures?

The Department last updated its categorical exclusions in 1996. Since that time, the range of activities in which DOE is involved has changed and expanded. For example, in recent years, DOE has received more applications for financial support from private applicants for actions that promote energy efficiency and energy independence. DOE has received thousands of applications under grant and loan programs established by the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009. Another change since 1996 is the growth and development of new technologies in the private and public sectors, including energy efficient and renewable energy technologies, and DOE's experience with those technologies. Through this proposed rulemaking, DOE proposes to update its categorical exclusions to address the Department's current activities and its experience and bring the provisions up-to-date with current technology and regulatory requirements.

How did DOE seek input on the proposed changes?

DOE has sought input from a number of different sources. First, DOE issued an internal memorandum on December 7, 2009, soliciting suggestions for new categorical exclusions or revisions from DOE Program and Field Offices, including DOE's network of NEPA Compliance Officers. Second, DOE Office of NEPA Policy and Compliance staff identified additional candidates for new or expanded categorical exclusions by reviewing the archive of DOE EAs that led to findings of no significant impact (FONSIs), researched the existing categorical exclusions established by approximately 50 Federal agencies, and reviewed existing DOE categorical exclusions to identify potential new categorical exclusions or revisions. Third, on December 29, 2009, DOE published a Request for Information in the **Federal Register** (74 FR 68720) seeking suggestions from interested parties. Eleven entities responded to the Request for Information: Endicott Biofuels, LLC; Golder Associates, Inc.; INFORM (Information Network for Responsible Mining); Johnson Controls, Inc.; Nuclear Watch New Mexico; Presco Energy, LLC; Sierra Geothermal Power Corp.; Solar Energy Industries Association; State of Oregon's Department of Energy; U.S. Chamber of Commerce; and a contractor for DOE's Golden Field Office. The Request for Information and these comments are available at *http://www.regulations.gov.*

The comments included proposals for new categorical exclusions and suggested revisions to limit or expand existing categorical exclusions or other related provisions. DOE addresses these comments in its discussion of specific classes of actions in Section IV. Comments of a more general nature that were not associated with a particular provision are addressed below in Section V.

How did DOE develop the proposed changes?

As described above, DOE reviewed and evaluated each of the proposed revisions, reviewed past DOE NEPA analyses and other agencies' NEPA analyses and categorical exclusions, and drafted proposed categorical exclusions and revisions. DOE created a Technical Support Document that presents proposed changes and information that supplements the Preamble discussion of the supporting basis for the changes. (*See http://www.regulations.gov,* Docket ID: DOE–HQ–2010–0002.) The proposed changes were developed in consultation with CEQ (*see* 40 CFR 1507.3), and are now, through this notice of proposed rulemaking, published for public review and comment. Instructions for how to provide comments are provided in Section III. DOE is also scheduling a public hearing to accept comments on the proposed rule. Details regarding the public hearing are provided in the **DATES** and **ADDRESSES** section and in Section III.B below. DOE will review the comments received during the public comment period, including those presented at the public hearing, and revise its proposal as appropriate. The final rule with DOE responses to comments would then be published in the **Federal Register.**

What kinds of changes does DOE propose?

DOE proposes to amend 10 CFR part 1021, subparts C and D. The majority of changes are proposed for the categorical exclusion provisions at 10 CFR part 1021, subpart D, appendices A and B, with a small number of related changes proposed for other provisions within subparts C and D.

DOE proposes to add 20 new categorical exclusions. These categorical exclusions (in the order in which they appear in appendix B) address: Stormwater runoff control; lead-based paint removal; recycling stations; determinations of excess real property; small-scale educational facilities; small-scale indoor research and development projects using nanoscale materials; research activities in salt water and freshwater environments; experimental wells for injection of small quantities of carbon dioxide; combined heat and power or cogeneration systems; small-scale renewable energy research and development and pilot projects; solar photovoltaic systems; solar thermal systems; wind turbines; ground source heat pumps; biomass power plants; methane gas recovery and utilization systems; alternative fuel vehicle fueling stations; electric vehicle charging

stations; drop-in hydroelectric systems; and small-scale renewable energy research and development and pilot projects in salt water and freshwater environments. DOE proposes to remove two categorical exclusion categories, one EA category, and two EIS categories.

DOE also proposes to modify many of the existing categorical exclusions. These revisions include substantive changes, as well as changes to reflect current regulatory or statutory references and requirements, and punctuation and grammatical changes to improve readability, clarity, and internal consistency. (By "substantive" changes DOE means a change that is more than a clarifying or consistency change; this term includes changes that alter the scope or meaning of a provision or that result in the addition or deletion of a provision.)

What would result from DOE's proposed changes?

The proposed changes would better align DOE's categorical exclusions with its current activities and its experience and bring the provisions up-to-date with current technology and regulatory requirements. The changes would also facilitate compliance with NEPA by providing for more efficient review of actions (helping the Department meet the goals set forth by Congress, for example, in the Energy Policy Act of 2005), and allowing the Department to focus its resources on proposed actions that have the potential for significant environmental impacts.

III. Invitation To Comment

DOE invites interested persons to participate in this rulemaking by submitting comments on the proposed rule and on the supporting information for proposed changes set forth in the Preamble and the Technical Support Document. Comments would be particularly useful to DOE if those comments: (1) Provide information to support or oppose a proposed change (for example, describing experience with similar actions that did or did not have significant environmental impacts or providing references to such experience); (2) justify increased or lessened limitations on the application of a categorical exclusion; or (3) explain recommended changes in addition to those that DOE proposes and provide the rationale for such additional changes. As appropriate, comments should refer to the specific section of the proposed rule to which the comment applies, identify a comment as a general comment, or identify a comment as a new proposal.

DOE will consider all timely comments received in response to this notice of proposed rulemaking, whether presented orally at the public hearing or written and submitted electronically or by mail.

A. Written Comments

Comments may be submitted by one of the methods in the **ADDRESSES** section of this proposed rule. Comments received will be included in the administrative record and will be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information specifically identified as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider to be CBI or otherwise protected should be submitted by mail, not through *http://www.regulations.gov.* If you submit information that you believe to be exempt by law from public disclosure, you should mail one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been redacted. Please include written justification as to why the redacted information is exempt from disclosure. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

The *http://www.regulations.gov* Web site is an "anonymous access" system, which means DOE will not know your contact information unless you provide it. If you choose not to provide contact information and DOE cannot read your comment due to technical difficulties, DOE may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

B. Public Hearing

Attendance

The time, date, and location of the public hearing are listed in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule. Persons wishing to attend the public hearing must present government-issued identification and pass through security screening upon entering the building. Foreign nationals are subject to advance security screening procedures. Any foreign national wishing to participate or attend the public hearing should advise DOE promptly in order to initiate the necessary procedures as soon as possible; see **FOR FURTHER INFORMATION CONTACT,** above.

Registering To Speak

Any person who has an interest in the topics addressed in this proposed rule may speak at the public hearing, either as an individual or as a representative of a group or organization of interested persons. Persons wishing to speak should register in advance, as described in **FOR FURTHER INFORMATION CONTACT**. After registered speakers have made their presentations, other persons may speak to the extent that time allows.

Conduct of Public Hearing

DOE will designate an official or facilitator to preside at the public hearing. The public hearing will be informal and not a judicial or evidentiary-type hearing. DOE reserves the right to schedule the order of speakers and to establish the procedures governing the conduct of the hearing. To ensure that all persons wishing to make a presentation can be heard, DOE may limit each presentation to 10 minutes or less. The presiding official or facilitator will announce any further procedural rules needed for the proper conduct of the public hearing. After the public hearing, interested persons may submit further comments until the end of the comment period.

A transcript of the hearing will be made and posted at *http://www.regulations.gov.*

C. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on several topics. As discussed in more detail in Section IV.B below, DOE seeks comments on its use of the phrases "including, but not limited to," and "such as" to introduce lists of examples. Unless otherwise specified, DOE's lists of examples are not intended to be exhaustive of all possible actions that fit within a categorical exclusion. DOE also seeks comments on its use of the phrase "would not have the potential to cause significant impacts" (or a similar construct) in lieu of the use of terms such as "adverse" or "substantial" as modifiers for potential impacts. DOE believes that the proposed phrase more accurately reflects NEPA and the CEQ NEPA regulations.

DOE is particularly interested in receiving comments and views of interested parties on the proposals relating to the following classes of actions:

B3.7 New Terrestrial Infill Exploratory and Experimental Wells
B3.15 Small-Scale Indoor Research and Development Projects Using Nanoscale Materials
B3.16 Research Activities in Salt Water and Freshwater Environments
B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power
B4.11 Electric Power Substations and Interconnection Facilities
B4.12 Construction of Transmission Lines
B4.13 Upgrading and Rebuilding Existing Transmission Lines
B5.1(b) Actions To Conserve Energy or Water
B5.13 Experimental Wells for Injection of Small Quantities of Carbon Dioxide
B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects
B5.16 Solar Photovoltaic Systems
B5.17 Solar Thermal Systems
B5.18 Wind Turbines
B5.19 Ground Source Heat Pumps
B5.20 Biomass Power Plants
B5.24 Drop-in Hydroelectric Systems
B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Salt Water and Freshwater Environments
B6.1 Cleanup Actions
C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power
D5 [Removed and Reserved: Main Transmission System Additions]
D6 [Removed and Reserved: Integrating Transmission Facilities]
D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE also welcomes comments on those categorical exclusions for classes of actions for which DOE has not proposed any revisions at this time.

IV. Description of Proposed Changes

A. Overview

This section describes and explains the proposed amendments to the existing DOE NEPA regulations at 10 CFR part 1021, subparts C and D.

In subpart C, Implementing Procedures, the proposed amendments are minor technical changes. Specifically, to correct internal references, DOE proposes changes to three sections in subpart C: (1) 10 CFR 1021.311—Notice of intent and scoping; (2) 10 CFR 1021.322—Findings of no significant impact; and (3) 10 CFR 1021.331—Mitigation action plans. These proposed minor technical changes to subpart C are not discussed further below.

In subpart D, DOE proposes extensive substantive and clarifying changes. Recurring proposals for subpart D are described in Section IV.B and then unique proposed changes to subpart D are described in Sections IV.C through IV.G. Support for the proposed revisions is summarized below, and more information regarding the supporting basis for certain provisions is provided in the Technical Support Document.

What is subpart D of the DOE NEPA regulations?

DOE's NEPA regulations at 10 CFR part 1021 include subpart D, which lists classes of actions and the typical level of NEPA review required for those classes of actions. Subpart D appendices A and B describe DOE's categorical exclusions. Appendix C describes classes of actions that normally require preparation of an EA, but not necessarily an EIS, and appendix D describes classes of actions that normally require preparation of an EIS.

Listing a class of actions in these appendices does not constitute a conclusive determination regarding the appropriate level of NEPA review for a proposed action. Rather, the listing creates an initial assumption that the defined level of review is appropriate for the listed actions. As indicated in the existing 10 CFR 1021.400(c) and (d), this assumption does not apply when there are extraordinary circumstances related to the proposed action that may affect the significance of the environmental effects of the action.

What types of changes does DOE propose to subpart D?

DOE proposes to make several types of changes to its subpart D regulations: these revisions include substantive changes, as well as changes to reflect current regulatory or statutory references and requirements, and punctuation and grammatical changes to improve readability, clarity, and internal consistency. A proposed change does not imply that any previous application of these regulations was inappropriate. *See* 10 CFR 1021.400(b).

DOE also proposes to delete the tables of contents for the classes of actions in subpart D, and instead to precede each section or paragraph with a short title. These short titles are included merely to guide the reader and do not have any regulatory effect.

Some of the proposed changes apply multiple times throughout the provisions; others are made in the context of a specific provision. Section IV.B of this proposed rule contains an explanation of proposals that recur, that is, that affect more than one class of actions, instead of duplicating the explanation for multiple individual classes of actions. Descriptions of specific individual proposed changes and support for such changes begin with Section IV.C. With respect to certain proposed changes, a more detailed explanation of the supporting basis is provided in the Technical Support Document. (The Technical Support Document and the "redline/strikeout" markup of DOE's existing regulations that show the proposed changes are available at *http://www.regulations.gov*.)

B. Recurring Proposals, Technology Updates, and Minor Changes

DOE proposes certain changes to its regulations that recur throughout subpart D. Seven recurring proposals are described below and are followed by a listing of the existing provisions where the recurring proposals occur. Discussion of these recurring proposals is not repeated in the discussion of classes of actions in Section IV below.

DOE also proposes to modify certain technology-specific vocabulary to reflect current usage, updates to references, and minor changes to punctuation and grammar to improve internal consistency. For example, to update technology-specific vocabulary, DOE proposes to change "electric powerlines" to "electric transmission lines" in several categorical exclusions. DOE also proposes to update references, as in categorical exclusion B3.12, which would reference the latest edition of a Centers for Disease Control manual. DOE is proposing to correct typographical errors (for example, changing "with" to "within" in categorical exclusion B1.13). Also, for certain classes of actions, DOE is proposing the addition of cross-references to related classes of actions. For example, DOE is proposing to add a cross-reference to the proposed new categorical exclusion B1.33 into the existing categorical exclusion B1.6.

B.1. Adjacent/Contiguous/Nearby

To clarify use of terms reflecting proximity, and to promote consistency in its categorical exclusions, DOE is proposing to delete the word "adjacent" from its categorical exclusions and use "contiguous" and "nearby," as appropriate. DOE proposes to use the word "contiguous," where the intended application is "touching along a boundary or at a point" or "being in actual contact." In contrast, DOE is proposing to use the word "nearby," where the intended application is "not distant" or "in proximity, but not necessarily touching." In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.31, B2.1, B4.7, B5.8, B5.12.

B.2. Including, But Not Limited to/ Including/Such as

DOE proposes to use the phrases "including, but not limited to," "including," and "such as" to introduce lists of examples. DOE considers the phrases to be synonymous. Unless otherwise specified, DOE's lists of examples are not intended to be exhaustive of all possible actions that fit within a class of actions. DOE proposes generally to use "including, but not limited to," the first time that examples are introduced in a provision and "such as" for any needed clarification of the examples. In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: 1021.410(b)(2), A1, A6, A9, A12, B(4), B1.3, B1.5, B1.9, B1.10, B1.11, B1.12, B1.13, B1.15, B1.16, B1.17, B1.20, B1.21, B1.24, B1.27, B1.29, B1.31, B1.32, B2.4, B2.5, B3.1, B3.4, B3.6, B3.7, B3.8, B3.9, B3.10, B3.11, B3.12, B3.13, B4.4, B4.6, B4.7, B4.9, B4.10, B4.11, B5.1, B5.2, B5.3, B5.4, B5.5, B5.6, B5.12, B6.1, B6.2, B6.3, B6.4, B7.2, C8, C16.

B.3. In Accordance With Applicable Requirements

DOE proposes to use the phrase "in accordance with applicable requirements" in several of its categorical exclusions for emphasis. DOE recognizes that all actions must be conducted in accordance with all applicable requirements. However, with certain categorical exclusions, DOE finds it appropriate to refer specifically to this requirement, and, further, in some cases also to provide one or more examples of applicable requirements. By referring to a specific requirement, DOE does not imply that the requirement is relevant to all actions to which the categorical exclusion may apply, or that the referenced requirement is the only one that applies to a proposed action. DOE's proposed wording is intended to allow for the evolution of the requirements over time. In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.2, B1.3, B1.9, B1.16, B1.17, B1.29, B2.5, B3.8, B3.12, B5.4, B5.6, B6.1, B7.2.

B.4. Would Not Have the Potential To Cause Significant Impacts

Appendices A and B contain a number of provisions that contain the word "adverse," or the use of "any" or "no" as descriptors of, or surrogates for, impacts. Through this proposed rulemaking, DOE proposes to replace these terms with "would not have the potential to cause significant impacts" or a similar construct (for example, describing a physical change that serves as a surrogate for impacts, such as in categorical exclusions B1.18, B3.4, B3.9, and B5.2). By the proposed changes, DOE's implementing regulations are now clearly aligned with the regulatory standard in NEPA. *See* 40 CFR 1508.4. Additionally, by this proposed change, DOE seeks to clarify the affected provisions and to facilitate consistent application. *See also* 40 CFR 1508.27 (addressing the meaning of "significantly" as used in NEPA).

DOE's review of the existing provisions demonstrated the need for clarification and consistency. For example, the existing categorical exclusion B3.8 requires that the action "would not result in any permanent change to the ecosystem." A literal reading of this categorical exclusion would bar its use if there were any permanent change to the ecosystem, even a change that would not have the potential to cause significant impacts. DOE acknowledges that this is not what NEPA requires and thus DOE proposes to rephrase the categorical exclusion to incorporate the appropriate NEPA standard, phrased as "would not have the potential to cause significant impacts on the ecosystem." In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B(4), B1.5, B1.11, B1.18, B1.24, B1.31, B2.3, B3.1, B3.3, B3.8, B3.9, B4.6, B5.1, B5.2, B5.12, C8.

B.5. On DOE Sites/Onsite/Employee

In recent years, DOE's proposed actions have included more applicant proposals, including those for DOE loan guarantees, grants, cooperative agreements, and other forms of financial assistance, particularly for programs created under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009. In an applicant situation, DOE's proposed action normally would not be located on a DOE site, but rather on private property or land administered by other agencies (*e.g.,* Bureau of Land Management). In recognition of DOE's recently expanded activities, DOE is proposing, where appropriate, to delete references to "DOE site," "onsite," or "employee" from its classes of actions. For example, DOE is proposing to amend existing categorical exclusion B1.13, Pathways, short access roads, and rail lines, by deleting "onsite" and instead inserting the condition that the construction, acquisition, and relocation of these linear features be "consistent with applicable right-of-way conditions and approved land use or transportation improvement plans." The significance of environmental impacts resulting from a class of actions does not depend on whether they occur at DOE sites.

In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.13, B1.15, B1.29, B1.32, B3.1, B6.10, C7, D7.

B.6. Previously Disturbed or Developed Area

In DOE's experience, the potential for certain types of actions to have significant impacts on the human environment is generally avoided when that action takes place within a previously disturbed or developed area, *i.e.,* land that has been changed such that the former state of the area and its functioning ecological processes have been altered. Thus, DOE includes a requirement in several of its proposed provisions that actions be located within previously disturbed or developed areas. In other instances, the existing provision contains a similar requirement, and DOE proposes to replace the existing language with the phrase "previously disturbed or developed area" for purposes of internal consistency. In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.31, B2.1, B3.6, B3.10, B3.12, B4.6, B4.7, B4.8, B4.12, B5.1, B5.5, B5.8, B6.10, C4, C11.

B.7. Small/Small-Scale/Minor/ Negligible/Short/Short-Term

DOE uses adjectives (such as "small," "small-scale," "minor," "negligible," "short," and "short-term") as limitations in a variety of its existing and proposed provisions and recognizes that these descriptors are subjective. In general, DOE did not and does not propose to define these terms, and DOE would apply a reasonable interpretation to such terms within the context of individual proposals. The CEQ regulations state that "significantly," as used in NEPA, requires consideration of context and intensity. *See* 40 CFR 1508.27. Likewise, consideration of context and intensity is useful when interpreting descriptors such as small, small-scale, minor, short, and short-term, in making categorical exclusion determinations for proposals. (DOE proposes to discontinue the use of the word "negligible.")

For example, in considering whether the use of 5–10 acres of land is "small"

for a particular proposal, it is reasonable to conclude that 5–10 acres of land at a large DOE site would likely be considered "small," but 5–10 acres of land might not be considered "small" in an urban environment. In some instances, however, the Department has quantified these descriptors because the size is more directly linked to impacts. For example, DOE categorizes a "small" area for outdoor ecological and other environmental research as generally less than 5 acres in its existing categorical exclusion B3.8. Additionally, DOE defines "small" water treatment facilities as those that have a total capacity of less than 250,000 gallons/day in existing categorical exclusion B1.26.

In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.2, B1.13, B1.15, B3.6, B3.8, B4.13, B5.1, B5.4, B5.7, C8.

C. Proposed Changes to Subpart D (Other Than Appendices)

10 CFR 1021.410 Application of Categorical Exclusions (Classes of Actions That Normally Do Not Require EAs or EISs)

DOE proposes to clarify four requirements in 10 CFR 1021.410. First, DOE proposes to remove the reference to Section 102(2)(E) of NEPA to clarify that DOE's consideration of unresolved conflicts concerning alternative uses of available resources is independent of the need to evaluate alternatives in an EA as indicated in Section 102(2)(E) of NEPA.

Second, in 10 CFR 1021.410(b)(3), DOE proposes to refer explicitly to the requirement that a categorically excludable project has not been segmented. DOE also proposes to change its references to the CEQ regulations to clarify consideration of potential cumulative impacts (40 CFR 1508.27(b)(7)), and to clarify that its references to 40 CFR 1506.1 and 10 CFR 1021.211 concern limitations on actions during EIS preparation.

Third, DOE proposes to add site preparation and purchase and installation of equipment to 10 CFR 1021.410(d) as examples of activities foreseeably necessary to implement proposals that are encompassed within the class of actions.

Fourth, DOE proposes to codify its policy to document and post online appendix B categorical exclusion determinations at 10 CFR 1021.410(e), consistent with the policy established by the Deputy Secretary of Energy's *Memorandum to Departmental Elements on NEPA Process Transparency and Openness*, October 2, 2009.

D. Proposed Changes to Appendix A—General Agency Actions

For an explanation of recurring proposals applicable to the appendix A categorical exclusions, please *see* Section IV.B, Recurring Proposals, above, where these proposed revisions are discussed and where the particular provisions affected are listed. The short titles listed below for particular categorical exclusions reflect DOE's proposed titles.

A1 Routine DOE Business Actions

DOE proposes to replace "agency" with "DOE" to clarify that this categorical exclusion applies only to DOE business actions. DOE also proposes to limit such actions to administrative, financial, and personnel actions.

A7 [Removed and Reserved: Transfer of Property, Use Unchanged]

To increase transparency of DOE's NEPA processes, DOE proposes to delete this categorical exclusion and to incorporate its key components within B1.24, which also addresses property transfers, so that any categorically excluded property transfers are documented and made available to the public. (*See* proposed changes to 10 CFR 1021.410(e) concerning documentation and public availability of DOE's appendix B categorical exclusion determinations.)

In response to DOE's December 2009 Request for Information, a commentor expressed concern that DOE, in making land transfer decisions under existing categorical exclusion A7, would be "circumventing local authority" and "normal land use planning and zoning processes." *See* the discussion of categorical exclusion B1.24 for DOE's response.

A9 Information Gathering, Analysis, and Dissemination

DOE proposes to clarify this categorical exclusion by providing site visits as an additional example of an action included within the category.

A13 Procedural Documents

DOE proposes to clarify this categorical exclusion by providing additional examples of actions included within the class of actions (*e.g.,* Policies and Manuals within the DOE Directives System).

E. Proposed Changes to Appendix B

For an explanation of recurring proposals applicable to the appendix B categorical exclusions, please *see* Section IV.B, Recurring Proposals, above, where these proposed revisions are discussed and the particular categorical exclusions affected are listed. The short titles listed below for particular categorical exclusions reflect DOE's proposed titles.

Integral Elements of the Classes of Actions in Appendix B

In appendix B(4), DOE proposes to clarify its use of "environmentally sensitive resource," defining it as "typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a Federally recognized Indian Tribe." This definition is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this language be construed to alter, amend, repeal, interpret, or modify Tribal sovereignty, any treaty rights of any Indian Tribes, or to preempt, modify, or limit the exercise of any such rights.

In appendix B(4)(i), DOE proposes to add "Federally recognized Indian Tribe" to its list of entities that designate property as historically, archeologically, or architecturally significant. DOE also proposes to redefine other environmentally sensitive properties as "determined to be eligible" for listing on the National Register of Historic Places (rather than the phrase "eligible for listing," which is used in the existing provision, but is not the proper characterization of an official listing). In appendix B(4)(iii), DOE proposes to apply the same definition of floodplains and wetlands in its NEPA regulations as that used in DOE's floodplain and wetland environmental review regulations (10 CFR part 1022.4). In appendix B(4)(iv), DOE proposes to supplement the list of areas having special designation with additional examples (national monuments and scenic areas). In appendix B(4)(v), DOE proposes changes to the prime agricultural lands listing to conform to the terminology of the applicable regulation (7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions").

In response to the Department's December 2009 Request for Information, one commentor addressed DOE's list of "environmentally sensitive resources" in appendix B(4). First, the commentor indicated that DOE must recognize State and Tribal protected or candidate species and habitat as equal to Federally designated or considered species and

habitats. Currently, appendix B(4)(ii) includes consideration of State-listed endangered and threatened species and their habitats, and DOE is proposing to add Federally-protected marine mammals and Essential Fish Habitat to the list of environmentally sensitive resources. DOE is not proposing to include Tribal protected or candidate species and habitat because it is DOE's understanding that Tribes do not have the authority to designate species or habitat for protection outside of Tribal lands.

Second, the commentor stated that "groundwater and aquifers are State, not Federal resources" and indicated that DOE's regulations must protect and preserve all aquifers, and not just sole-source aquifers. The commentor further stated that adverse impacts to rivers, lakes, and bays, among other bodies of water, should not be allowed "unless they are specifically covered by a State and/or Tribal discharge permit under appropriate authority." DOE is not proposing a change to the existing appendix B(4)(vi), which lists "special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region)" in its list of environmentally sensitive resources, because those resources are listed as examples and are not the only water sources to be considered in applying a categorical exclusion. Further, the existing appendix B(4) includes States and Federally recognized Tribes as entities with jurisdiction to identify water sources needing protection.

Categorical Exclusions Applicable to Facility Operation (B1)

B1.1 Changing Rates and Prices

DOE proposes to change this categorical exclusion to encompass the setting of "prices" as well as "rates" (prices apply to products, and rates apply to services) and to consider price and rate changes instead of only increases. DOE proposes to change the measure of inflation specified in this categorical exclusion from the Gross National Product fixed weight price index, which the Department of Commerce no longer publishes, to the implicit price deflator for Gross Domestic Product. (*See* the Technical Support Document.)

B1.2 Training Exercises and Simulations

DOE proposes to provide additional examples of training actions (namely, small-scale and short-duration force-on-force exercises, and decontamination and spill cleanup training), and has added the condition that all training exercises and simulations be conducted under appropriately controlled conditions and in accordance with applicable requirements. The term "force-on-force" as used in this categorical exclusion refers to activities such as assault and defensive team exercises conducted by security forces or military units, often on parcels of DOE property not in use. Exercises that test the ability of security forces to defend a facility are one common example of this type of training. DOE's experience with these types of security force and military training actions and emergency response training at its sites indicates that they fit within the class of actions. (*See* the Technical Support Document.)

B1.3 Routine Maintenance

DOE proposes to clarify that routine maintenance actions may occur as a result of nonroutine events (*e.g.,* severe weather, such as hurricanes, floods, and tornadoes, and wildfires) by adding a sentence to that effect in its description of routine maintenance. Normally, maintenance following a nonroutine event would qualify as routine maintenance; however, for a nonroutine event, the potential for extraordinary circumstances is higher (*e.g.,* increased exposure to pesticides due to extreme runoff).

DOE proposes to clarify the scope of the categorical exclusion by providing additional examples of activities. Specifically, DOE is proposing to clarify that replacement is included in the categorical exclusion's scope under items (a), (c), and (e), as well as the existing example of repair; to add "lighting" to those items that can be repaired or replaced (item (e)); to add "scraping and grading of unpaved surfaces" to the example of road and parking area resurfacing (item (j)); and to add the additional example of "removal of debris" under item (p). DOE's experience with these activities has demonstrated that they properly fit within this class of actions.

In response to the Department's December 2009 Request for Information, one commentor stated that use of pesticides for outdoor or aquatic use should not be the subject of a categorical exclusion; instead an EA should be prepared. The commentor expressed a specific concern about the possibility for environmental impacts beyond the intended application. In existing categorical exclusion B1.3, DOE has described routine maintenance activities including localized vegetation and pest control. DOE now proposes to clarify that any routine maintenance activities would be conducted in a manner in accordance with applicable requirements. In the case of pesticides and other chemicals, for example, the proposed change would provide that the application would be in accordance with the registered and approved uses established by appropriate authorities to minimize the possibility of environmental impacts beyond the product's intended application.

B1.5 Existing Steam Plants and Cooling Water Systems

DOE proposes to delete the words "within an existing building or structure," so as to include modifications to ponds, which may be outdoor components of cooling water systems. This proposed expansion of the scope of this categorical exclusion would address the need for improvements to an entire cooling water system, rather than only those parts of a system associated with structures. Based on DOE experience, minor improvements would not have the potential to cause significant impacts, provided the three limitations placed on the scale and type of improvements listed in the categorical exclusion are met.

DOE also proposes to add minor improvements of existing steam plants in the scope of the categorical exclusion. DOE's experience is that these actions, when subject to the three limitations placed on the scale and type of such improvements, fit appropriately within this class of actions and would not have the potential to cause significant impacts.

B1.7 Electronic Equipment

DOE proposes to update the existing categorical exclusion by adding examples of current technology and equipment that improve operational efficiency and stability of the nation's power grid, commonly referred to as "smart grid" technologies. Based on DOE's experience, such technology and equipment (*i.e.,* electricity transmission control and monitoring devices for grid demand and response) fit within the scope of this categorical exclusion.

B1.9 Airway Safety Markings and Painting

DOE proposes to include repair and in-kind replacement of lighting within the scope of this categorical exclusion. Within the context of this categorical exclusion, in-kind replacement is defined as replacement that does not result in a significant change in the expected useful life, design capacity (for example, energy output in lumens), function, or shielding of existing

lighting. The initial installation of such lighting would remain ineligible for categorical exclusion. In addition, DOE proposes to add wind turbines as structures similar to transmission lines and antenna structures to which the exclusion applies. DOE has determined that these proposed changes would not have the potential to cause significant impacts.

B1.11 Fencing

DOE proposes to clarify that the limitation in this categorical exclusion applies to fencing that would have the potential to cause significant impacts to surface water flow or wildlife populations or migration, as opposed to individual animal movements. Fencing can and probably often does affect individual movements, but such impacts on individual animals would not be considered significant unless the context and intensity of the impacts would have the potential to cause significant impacts to wildlife populations or migration.

B1.12 Detonation or Burning of Explosives or Propellants After Testing

DOE proposes to delete the restriction that explosives or propellants must have failed in outdoor tests and thus to expand the categorical exclusion to include explosives or propellants that failed in indoor tests. Whether the explosives or propellants were tested indoors or outdoors, the outdoor detonation or burning of those explosives or propellants would not have the potential to cause significant impacts. The phrase "otherwise not consumed in testing" refers to excess or residual explosive or propellant materials that remain after a test is completed. DOE also proposes to specify one type of permit under the Resource Conservation and Recovery Act that could be applicable.

In response to DOE's December 2009 Request for Information, one commentor requested that DOE specify the amount, types, and methods allowed for the activities included in this categorical exclusion. DOE has determined that the limits contained in this categorical exclusion do not require quantification and is not proposing any changes to the categorical exclusion in response to this comment.

B1.13 Pathways, Short Access Roads, and Rail Lines

DOE proposes to expand the scope of the categorical exclusion to include more projects related to transportation, recreation, and fitness (*e.g.,* pedestrian walkways and trails, bicycle paths, and small outdoor fitness areas). Other Federal agencies that have categorical exclusions for comparable projects are the Bureau of Indian Affairs, the Federal Highway Administration, and the Department of Homeland Security, and the experience of these agencies supports DOE's proposed expansion of this categorical exclusion.

DOE also proposes to include a condition in the categorical exclusion that the actions be consistent with existing rights-of-way and approved land use or transportation improvement plans. In addition, DOE proposes to replace "railroads" with the term "rail lines," adding branch or spur lines as examples. DOE's experience is that the construction of rail access to or within an existing site has generally occurred at a scale that is better characterized by these small-scale activities—branch line (a secondary rail line which may branch off a main line) and spur (a rail track on which cars are left for loading, unloading, or rail car storage).

In response to the DOE's December 2009 Request for Information, a commentor stated that road construction or expansion should not be the subject of a categorical exclusion. Further, the commentor expressed a concern about the potential for damage to "high quality, high priority habitat" as a result of constructing and operating roads and that use of such a categorical exclusion would limit or circumvent consideration of appropriate mitigation for habitat disturbance or loss. As outlined above, DOE's proposed amendments to categorical exclusion B1.13 require the construction, acquisition, and relocation of short access roads and rail lines to be consistent with applicable right-of-way conditions and approved land use or transportation improvement plans. Furthermore, consideration of the integral elements in applying this categorical exclusion addresses the possibility of damage to "high quality, high priority habitat" because, among other things, one of the "environmentally sensitive resources" to consider in those integral elements is habitat for Federally or State-listed species. (*See* the Technical Support Document.)

B1.15 Support Buildings

DOE proposes to expand the list of examples of support buildings and support structures to include those for "small-scale fabrication (such as machine shop activities and modular buildings), assembly, and testing of non-nuclear equipment or components." Such structures are comparable to, or smaller in scale than, other structures given as examples in the categorical exclusion, and DOE's experience at DOE sites is that siting, construction, and operation of these activities normally fit within the class of actions. Also, DOE proposes to further clarify the scope of the categorical exclusion by specifying that it excludes facilities for nuclear weapon activities.

B1.19 Microwave, Meteorological, and Radio Towers

DOE proposes to add "modification," "abandonment," and "removal" to the list of activities included in this class of actions in order to describe the complete life cycle of categorically excluded towers. In DOE's experience, modification, abandonment, and removal of these towers and associated facilities, when subject to the restrictions in this categorical exclusion, would have fewer impacts than construction and would not have the potential to cause significant impacts.

DOE proposes to include meteorological towers as an additional example of applicable facilities within this categorical exclusion because DOE has determined that the environmental impacts resulting from siting, construction, modification, operation, abandonment, and removal of meteorological towers would be similar to the impacts from these activities relating to microwave and radio towers already contained in the scope of the existing categorical exclusion.

DOE proposes to clarify the restriction in the existing categorical exclusion, by replacing "great visual value" with a more objective criteria of "governmentally designated scenic area" and cross-referencing to the relevant integral element (appendix B(4)(iv)).

B1.20 Protection of Cultural Resources, Fish and Wildlife Habitat

DOE proposes to add to the scope of this categorical exclusion by referencing activities taken to protect cultural resources and by including examples of those activities (fencing, labeling, or flagging). DOE's Power Marketing Administrations often engage in such activities for cultural and wildlife protection purposes, and these activities would not have the potential to cause significant impacts. DOE also proposes to include a condition in the categorical exclusion that the activities would be conducted in accordance with an existing natural or cultural resource plan, if any.

B1.23 Demolition and Disposal of Buildings

In response to DOE's December 2009 Request for Information, one commentor questioned whether there should be a

size limitation for the activities under this categorical exclusion. Further, the commentor asked how DOE takes into consideration possible contamination when applying this categorical exclusion. In response to these comments, DOE proposes to modify this categorical exclusion by adding a limitation that these activities could be categorically excluded only if there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

The application of this categorical exclusion is intended to be based on existing data and knowledge about historical uses of the area, including chemical and other processes employed. DOE has extensive experience (former Rocky Flats Site, Hanford Site, Idaho National Laboratory, and other sites) in determining the potential for release of harmful substances from activities through modeling and safety basis authorization documentation. Potential hazards are considered before taking action (for example, demolition actions), and monitoring is conducted, as appropriate, to verify that there are no harmful releases of radiological or hazardous materials. Potential for releases can reliably be determined through site inventories, the use of well-established release models, and established best practices.

B1.24 Property Transfers

As discussed under categorical exclusion A7 (above), DOE proposes to delete A7 and incorporate its key components, including transfers of personal property (equipment and materials), within B1.24. By doing this, DOE makes categorical exclusion determinations for property transfers subject to documentation and online posting. DOE proposes to remove the reference to "uncontaminated" as unnecessary given the incorporation of the substance of this limitation in the revised categorical exclusion.

DOE proposes to delete the phrases "there would not be any lessening in quality or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents" and "environmental impacts would generally be similar to those before the transfer" as potentially inconsistent. DOE proposes to replace these phrases with "there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment" and "would not have the potential to cause a significant change in impacts from the transfer." Such terminology will, in DOE's experience, ensure that any property transfers under this categorical exclusion would not have the potential to cause significant impacts.

In response to DOE's December 2009 Request for Information, a commentor expressed concern that DOE, in making land transfer decisions under existing categorical exclusion A7, would be "circumventing local authority" and "normal land use planning and zoning processes." The potential applicability of such authority and processes to a potential land transfer would be addressed on a case-by-case basis.

B1.25 Property Transfers for Cultural Resources Protection, Habitat Preservation, and Wildlife Management

DOE proposes to include in B1.25 actions undertaken to protect cultural resources. DOE's Power Marketing Administrations often engage in property transfers for cultural protection purposes. Based on this experience, DOE finds property transfers intended for protecting cultural resources normally would not have the potential to cause significant impacts. Further, DOE proposes to remove the limitation that only associated buildings supporting certain purposes are to be transferred with property under this categorical exclusion, because the existing purpose of structures present on a property to be transferred for wildlife or cultural resource purposes is unrelated to environmental impacts associated with such transfer.

Also, for the reasons discussed for categorical exclusion B1.24, above, DOE proposes to eliminate the references to "uncontaminated," but include a limitation on actions subject to categorical exclusion B1.25, that there would be no potential for release of a substance at a level or in a form, that could pose a threat to public health or the environment.

B1.29 Disposal Facilities for Construction and Demolition Waste

DOE proposes to add "expansion" and "modification" to the list of activities included in this categorical exclusion in order to include all aspects of the life cycle of the disposal facilities. In DOE's experience, expansion and modification actions, when subject to the limitations expressed in this categorical exclusion, would have fewer impacts than construction, and would not have the potential to cause significant impacts.

B1.30 Transfer Actions

DOE proposes to modify this categorical exclusion (based on its experience transferring materials and equipment) to remove the condition that the amounts of materials, equipment, or waste being transferred must be "small and incidental" to the amount of such material at the receiving site. Instead, DOE proposes to add a condition that the receiving site has existing storage capacity and management capability for the material.

In addition, DOE proposes to limit use of the categorical exclusion to, as appropriate, facilities and operations that are already permitted, licensed, and approved. That is, this proposed categorical exclusion would not apply to circumstances where the receiving site requires a permit or license amendment or variance from its existing approvals in order to receive or manage the materials, and it also would not apply to circumstances where the receiving facilities are not yet completed and operational.

DOE has decades of experience transporting materials, including various types of radioactive materials and waste, and has completed NEPA reviews of such transportation under many different scenarios. DOE NEPA reviews of such transfers consistently show that these actions would not have the potential to cause significant impacts. Nevertheless, DOE will continue to analyze transportation impacts in EAs and EISs where the scope of the proposed action presents the potential for significant impacts or where the proposed action fails to meet the conditions contained in this categorical exclusion. (*See* the Technical Support Document.)

B1.31 Installation or Relocation of Machinery and Equipment

DOE proposes several changes to this categorical exclusion. DOE proposes to add "installation" to the list of actions, which is now limited to the "relocation" of machinery and equipment; explicitly include "operation" of installed or relocated machinery and equipment; add "manufacturing machinery" in the list of examples of machinery and equipment; and clarify that the scope of the categorical exclusion includes modifications to an existing building, within or contiguous to a previously disturbed or developed area, provided that the modifications do not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts. DOE also proposes to delete the restriction that uses of the installed or relocated equipment be similar to their former uses, because it is duplicative of the limitation that the actions be consistent with the general missions of the receiving structure. DOE has determined

that these proposed changes would not have the potential to cause significant impacts.

In response to DOE's December 2009 Request for Information, one commentor suggested that DOE categorically exclude projects (*e.g.,* residential, commercial, and industrial) that involve retrofitting or retooling of existing structures, provided that the projects do not include new construction, disturb previously undisturbed areas, or require new or significantly modified environmental permits. Further, the commentor explained that such a categorical exclusion would help facilitate alternative energy manufacturing projects (*e.g.,* batteries, solar equipment, and wind turbines) that are proposed to be located in existing manufacturing/industrial facilities and complexes. As described above, DOE has proposed several changes to this categorical exclusion that address these comments.

B1.32 Traffic Flow Adjustments

Because DOE proposes to broaden the scope of this categorical exclusion to include actions off DOE sites (*see* Recurring Proposals, Section IV.B), DOE proposes to require that the activities in this categorical exclusion occur within an existing right-of-way and be consistent with approved land use or transportation improvement plans. A "traffic flow adjustment" is a change to the flow of traffic on an existing street or road. Statewide and Metropolitan Transportation Planning processes are regulated by the U.S. Department of Transportation (23 CFR part 450, subparts B and C, respectively) and result in approved, legally-binding, multiyear plans that stipulate transportation actions that may be carried out in a given area and over a given length of time.

B1.33 Stormwater Runoff Control

DOE proposes a new categorical exclusion for stormwater runoff control practices that reduce stormwater runoff and maintain natural hydrology. The actions included in the proposed categorical exclusion are found in Environmental Protection Agency's Guidance No. EPA 841–B–09–001, Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act (December 2009). Based on the experience of Federal agencies, the opinions of subject matter experts, and private sector experience developing and deploying stormwater runoff control and low impact development practices, the types of actions included in this categorical exclusion are, in most cases, mitigation or best management practices commonly employed to protect surface water quality and to reduce erosion associated with runoff. DOE has concluded that such activities would not have the potential to cause significant environmental impacts. (*See* the Technical Support Document.)

B1.34 Lead-Based Paint

DOE proposes a new categorical exclusion for the containment, removal, and disposal of lead-based paint. This proposed categorical exclusion is based on laws and regulations governing such activities for buildings and other structures. Use of the proposed categorical exclusion would require adherence to applicable laws and regulations. Further, the creation of this categorical exclusion is supported by existing lead paint removal categorical exclusions from the Environmental Protection Agency and the Department of the Army. DOE has determined that such paint removal actions would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B1.35 Drop-Off, Collection and Transfer Facilities for Recyclable Materials

DOE proposes a new categorical exclusion for the siting, construction, modification, and operation of a recycling or compostable material drop-off, collection, and transfer station on or contiguous to developed or previously disturbed land and in an area where such a facility would be consistent with existing zoning requirements. The Department of Homeland Security and the Department of Agriculture's Rural Utilities Service have existing categorical exclusions for similar facilities. Specifically, Homeland Security has a categorical exclusion for the recycling of non-hazardous materials from routine/operational activities, and the Rural Utilities Service has a categorical exclusion for the construction of facilities for the transfer of waste that will be recycled or stored. DOE has determined that the limitations placed on recycling stations proposed in this new categorical exclusion would ensure that such actions would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B1.36 Determinations of Excess Real Property

DOE proposes a new categorical exclusion for determinations that real property is excess to the needs of the Department. This proposed categorical exclusion includes associated reporting of such determinations to the General Services Administration and the Bureau of Land Management, as appropriate. DOE would allow the categorical exclusion of reporting of excess property, but the actual disposal of real property is not included in the scope of this proposed categorical exclusion.

Other Federal agencies (*e.g.,* Department of Homeland Security) have existing categorical exclusions for determinations of excess real property and, based on a review of these categorical exclusions, DOE has determined that it would be conducting the same or similar activities under similar circumstances. Accordingly, DOE has concluded that its activities under this proposed categorical exclusion would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

Categorical Exclusions Applicable to Safety and Health (B2)

B2.1 Workplace Enhancements

DOE proposes to clarify that improvements to enhance workplace habitability may include installation of equipment necessary for the improvements by adding "installation" before its examples of improvements. DOE has determined that installation and subsequent operation of equipment necessary for improvements to workplace habitability would not have the potential for significant environmental impacts.

B2.2 Building and Equipment Instrumentation

DOE proposes clarifying the scope of the existing categorical exclusion by providing additional examples of instrumentation (water consumption monitors and controls).

B2.4 Equipment Qualification

DOE proposes to delete the reference to DOE Order 5480.6 ("Safety of DOE owned Nuclear Reactors") because it has been cancelled. Actions previously encompassed by the Order are still performed by DOE and other organizations to qualify equipment for use and are still appropriate for a categorical exclusion, and DOE proposes to provide examples of such actions. Calibration of sensors and diagnostic equipment, crane and lift-gear certifications, and high efficiency particulate air ("HEPA") filter testing and certifications, to name a few, are activities that DOE proposes to list as examples in the categorical exclusion. These types of actions have been performed routinely by DOE, other

Federal agencies, and private entities. In DOE's experience, these activities would not have the potential to cause significant impacts.

B2.6 Recovery of Radioactive Sealed Sources

DOE proposes changes to this categorical exclusion to better reflect the current scope of DOE's sealed source recovery activities. At the time the existing categorical exclusion was established, the focus of DOE's efforts was primarily the recovery of DOE-owned radioactive materials that had been loaned or leased, such as to universities for research, and a small number of sealed sources. DOE later established the Off-Site Source Recovery Project (OSRP) to reflect an increased emphasis on recovery of sealed sources from Nuclear Regulatory Commission (NRC) and Agreement State licensees in response to requests from the NRC and other Federal or State agencies. After 2001, DOE further expanded the scope of OSRP to focus on the recovery of sources with a wider variety of radioisotopes of concern from a public health, safety, or national security perspective. Due to their high activity and portability, many sealed sources could be used either individually or in aggregate in radiological dispersal devices commonly referred to as "dirty bombs." DOE prioritizes the recovery of radioactive sealed sources based on threat reduction criteria developed in coordination with the NRC. DOE's experience with the recovery of more than 25,000 radioactive sealed sources since 1979 demonstrates that these activities are routinely conducted and do not have the potential to cause significant environmental impact.

DOE proposes to simplify the existing categorical exclusion to address the recovery of radioactive sealed sources and sealed source-containing devices from domestic or foreign locations provided that (1) the recovered items are transported and stored in compliant containers, and (2) the receiving site has sufficient existing storage capacity and all required licenses, permits, and approvals.

These proposed changes would reflect changes in DOE's source recovery activities since the existing categorical exclusion was formulated. First, recovery activities are no longer limited to requests from NRC or other Federal or State agencies. DOE also considers requests for source recovery from foreign governments and private parties, including private parties in foreign countries. Also, DOE provides financial and technical support to third parties (principally the Conference of Radiation Control Program Directors) for source recovery activities. Second, the scope of DOE activities is not limited to materials or licensees addressed in 10 CFR 51.22(14).

The proposed changes also would remove the reference to certain items that are not sealed sources (such as uranium shielding material and packaged radioactive waste not exceeding 50 curies). DOE has determined that the packaging, transportation, and storage of these types of materials normally would fit within categorical exclusion B1.30, Transfer actions. (*See* the Technical Support Document.)

Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research (B3)

B3.1 Site Characterization and Environmental Monitoring

DOE proposes several changes to categorical exclusion B3.1. DOE proposes to limit the scope of this categorical exclusion to terrestrial characterization and monitoring, as DOE is proposing a new categorical exclusion for such actions in salt water and freshwater environments (categorical exclusion B3.16 below). DOE also proposes to limit categorically excluded activities to those that would not have the potential to cause significant impacts from ground disturbance. Based on a project description for seismic surveying submitted by a commentor in response to DOE's December 2009 Request for Information, and after considering the potential scale of seismic surveying projects, DOE proposes to also limit the scope of the categorical exclusion so as not to include large-scale reflection or refraction testing with regard to seismic techniques.

One commentor responding to DOE's Request for Information suggested that DOE's list of categorical exclusions match all the categorical exclusions currently being used by the Bureau of Land Management and the U.S. Forest Service, particularly for geophysical surveys for exploration of geothermal resources. Another commentor suggested that DOE include a categorical exclusion for terrestrial seismic survey activities. In response to both comments, DOE notes that item (a) of the existing B3.1 categorical exclusion lists geological, geophysical, and geochemical surveying and mapping, including seismic surveying, as examples of actions in the scope of the categorical exclusion. Thus DOE determined that it was not necessary to propose new categorical exclusions in response to these comments.

DOE proposes to clarify the scope of the existing categorical exclusion, however, by providing additional examples of actions that DOE's experience has demonstrated properly fit within this class of actions. In response to the suggestion above and from another commentor concerning geothermal resources, DOE proposes to include temperature gradient surveying as an example of geophysical surveying activities encompassed within item (a). DOE also proposes to add underground reservoir response testing for item (d). The potential impacts of aquifer and reservoir response testing are well-known and normally insignificant; underground reservoir response testing could help determine, for example, whether further study of a reservoir for carbon sequestration purposes is warranted. DOE also proposes to add drilling using truck or mobile-scale equipment and modification, use, and plugging of boreholes as representative examples of small-scale drilling activities under item (f). DOE experience indicates that these changes would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B3.3 Research Related to Conservation of Fish, Wildlife, and Cultural Resources

DOE proposes to modify this categorical exclusion to include actions undertaken to protect cultural resources. These types of actions (such as walking a site, visually surveying, and digging small, shallow test holes with hand tools) are similar to types of actions undertaken for wildlife protection and would not have the potential to cause significant impacts.

B3.6 Small-Scale Research and Development, Laboratory Operations, and Pilot Projects

DOE proposes changes to this categorical exclusion for clarity. First, DOE proposes to delete the phrase "indoor bench-scale research," which DOE views as encompassed within "small-scale research and development," which is more easily understood. DOE also proposes to define "demonstration actions" in the context of this categorical exclusion and the related EA class of actions C12 as "actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. Demonstration actions frequently follow research and development and pilot projects that are directed at establishing proof of

concept." This definition reflects DOE's understanding of the delineation between pilot projects and demonstration projects that would be relevant to the scope of this categorical exclusion.

B3.7 New Terrestrial Infill Exploratory and Experimental Wells

DOE proposes to modify the scope of the categorical exclusion. DOE proposes to expand the categorical exclusion by providing additional examples of resources (brine, carbon dioxide, coalbed methane, gas hydrate) for which exploratory or experimental wells may be drilled. For carbon sequestration wells, DOE proposes to list examples of possible uses, including, but not limited to, the study of saline formations, enhanced oil recovery, and enhanced coalbed methane extraction. DOE also proposes to expand the locations where the infill wells may be drilled (now only in fields with operating wells) to fields with properly abandoned wells or unminable coal seams.

DOE proposes to limit this categorical exclusion to the terrestrial environment and to require that characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers.

DOE experience with new infill exploratory and experimental (test) oil, gas, and geothermal wells continues to show that they would not have the potential to cause significant impacts. DOE experience also shows that the potential impacts of infill exploratory and test wells for substances such as brine, carbon dioxide, coalbed methane, and gas hydrate would be similar and would not have the potential to cause significant impacts under the limitations of this proposed categorical exclusion. Based on DOE's experience, the proposal to expand the scope of this categorical exclusion, subject to the proposed additional limitations, would not have the potential to cause significant impacts.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B3.8 Outdoor Terrestrial Ecological and Environmental Research

DOE is proposing two new categorical exclusions covering small-scale research activities in salt water and freshwater environments, and those two categorical exclusions limit the types of activities and their location specifically to protect aquatic environments. (*See* B3.16 for research activities in salt water and freshwater environments and B5.25 for small-scale renewable energy research and development and pilot projects in salt water and freshwater environments.) DOE is therefore proposing to clarify that the types of covered actions included in B3.8 are solely limited to terrestrial environments.

DOE is also proposing to clarify that this categorical exclusion includes small-scale biomass and biofuels research. Given the current focus on the development of biomass and biofuel production and the need for proof of concept research in this area, DOE proposes to state explicitly that small test plots for energy-related biomass or biofuels research (including the use of genetically engineered plants) are within the scope of this categorical exclusion.

Research using genetically engineered plants to be grown specifically for biomass production has reached the point where field tests are being performed outdoors for proof of concept purposes. At the same time, residues from biotechnology crops such as corn and soybeans are being tested as feedstocks for biofuel production. Such plants are currently regulated by the U.S. Department of Agriculture and these existing regulatory regimes have analyzed the environmental impacts resulting from the experimental and commercial growth of these crops, so there is no need for DOE to analyze separately these impacts to show their insignificance. DOE has determined that a categorical exclusion would be appropriate for small field tests, provided that the applicant already has all the necessary authorizations from the U.S. Department of Agriculture and received all necessary permissions to proceed with the trial. (*See* the Technical Support Document.)

B3.9 Projects To Reduce Emissions and Waste Generation

This categorical exclusion was initially created for demonstration actions under DOE's Clean Coal Technology Demonstration Program. However, after many years of experience with projects that reduce emissions and waste generation at existing fossil fuel facilities and, more recently, at alternative energy facilities, DOE is proposing modifications to the categorical exclusion for these activities regardless of whether or not they are part of DOE's Clean Coal Technology Demonstration Program. Specifically, DOE is proposing to expand the scope of this categorical exclusion to include projects to reduce emissions and waste generation at alternative fuel (*e.g.,* biomass) facilities, in addition to fossil fuel facilities. As a result, DOE is proposing conforming revisions throughout this categorical exclusion (*e.g.,* replacing "coal" with "fuel"). Further, DOE proposes to define fuel to include "coal, oil, natural gas, hydrogen, syngas [synthesis gas], and biomass," and specifically to exclude nuclear fuels.

Based on its experience with these activities, DOE has found that projects that demonstrate ways to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities would not have the potential to cause significant impacts. (*See* the Technical Support Document.) DOE also proposes to remove from categorical exclusion B3.9(a) the 20 percent limitation on test treatment of the throughput product (solid, liquid, or gas) generated at existing, fully operational fuel combustion or utilization facilities. Although test treatment on a fraction of the throughput product (sometimes referred to as "slipstream testing") may be helpful in evaluating new treatment technologies, DOE experience shows that test treatment of the entire throughput product stream may be needed to provide an adequate demonstration of the commercial viability of technologies that could reduce emissions from existing facilities. DOE analyses and experience show that such test treatment normally would not have the potential to cause significant impacts under the limitations of this categorical exclusion.

Further, DOE proposes to remove from B3.9(c) the two-year limitation on the addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances at existing facilities. In DOE's experience, the potential for significant impacts of such projects does not depend on the duration of the demonstration. Moreover, two years may be too short a period of time for an adequate demonstration of equipment whose continued use is likely to be beneficial.

In addition to the provisions of B3.9(c), DOE proposes explicitly to include the addition or modification of equipment for capture and control of carbon dioxide or other regulated substances, provided that adequate infrastructure is in place to manage such substances. The use of such equipment offers the potential for environmental benefits by providing needed information on the costs, operability, and reliability of capture technologies that could enable their future deployment in existing conventional coal and other fuel utilization facilities. DOE's knowledge and experience with the physical or chemical unit processes

that could capture carbon dioxide at existing facilities show such processes would not have the potential to cause significant impacts under the conditions specified in the proposed modification of this categorical exclusion.

B3.10 Particle Accelerators

DOE proposes to modify this categorical exclusion by more clearly specifying the operating parameters for particle accelerators. This categorical exclusion currently has only one limiting parameter (primary beam energy less than approximately 100 million electron volts (MeV)). DOE's proposed modification would provide two additional limiting parameters (average beam power less than approximately 250 kilowatts (kW) and average current of 2.5 milliamperes (mA)). The voltage would be allowed to increase, as long as the resulting average current was 2.5 mA. Such result could be accomplished by lowering the power (wattage). Alternately, the wattage could increase if voltage decreased to result in an average current of 2.5 mA. DOE has determined that the use of three parameters will provide flexibility in the application of the categorical exclusion, but the actions still would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B3.11 Outdoor Tests and Experiments on Materials and Equipment Components

The existing categorical exclusion precludes DOE from categorically excluding outdoor burn, impact, drop, puncture, and similar tests involving radiological sources, whether or not they were encapsulated. Because encapsulated sources can be used safely in these types of tests, DOE proposes to expand the scope of the categorical exclusion to cover their use under certain conditions. Specifically, DOE is proposing that nondestructive actions such as detector/sensor development and testing and first responder field training, using encapsulated sources that contain source, special nuclear, or byproduct materials, be included in the scope of this categorical exclusion. DOE experience demonstrates that such activities can be done safely and would not have the potential to cause significant impacts.

B3.14 Small-Scale Educational Facilities

DOE proposes a new categorical exclusion for the siting, construction or modification, operation, and decommissioning of small-scale educational facilities, including, but not limited to, conventional teaching laboratories, libraries, classroom facilities, auditoriums, museums, visitors centers, exhibits, and associated offices within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Based on DOE's experience, and supported by past NEPA analyses, such activities, under the limitations provided, would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B3.15 Small-Scale Indoor Research and Development Projects Using Nanoscale Materials

DOE proposes a new categorical exclusion for the siting, construction, or modification, operation, and decommissioning of facilities for indoor small-scale research and development and small-scale pilot projects using nanoscale materials, in accordance with applicable requirements necessary to ensure the containment of any biohazardous materials. Construction or modification would be within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). This proposed categorical exclusion includes activities that are already in the scope of B3.6 (Small-scale research and development, laboratory operations, and pilot projects); however, as part of its rulemaking effort, DOE finds it appropriate to propose a categorical exclusion that specifically addresses nanoscale activities.

DOE has extensive small-scale or laboratory-scale experience working with engineered (intentionally created, rather than natural or incidentally formed) nanoscale materials. For example, DOE is participating in interagency workgroups, such as the National Nanotechnology Initiative (*http://www.nano.gov/html/about/home_about.html*), that seek to promote responsible research and development of nanotechnology, ensure that the important benefits to environmental protection that nanotechnology may offer are realized, and better understand any potential risks from exposure to nanomaterials in the environment. DOE conducts basic research and development that supports the National Nanotechnology Initiative at its nanoscale research centers, in accordance with DOE Policy 456.1 (DOE P 456.1, Secretarial Policy Statement on Nanoscale Safety), and best management practices and policies that ensure protection of workers and the environment, such as DOE Nanoscale Science Research Centers: Approach to Nanomaterials ES&H, (Rev3a, May 2008) ("Approach to Nanomaterial ES&H") (*http://orise.orau.gov/ihos/Nanotechnology/nanotech_DOE_Nanoscale_SC.html*). As explained in "Approach to Nanomaterial ES&H," "laboratory-scale" research excludes those activities whose function is to produce commercial quantities of materials, as defined in 29 CFR 1910.1450(b)(2), "Occupational Exposure to Hazardous Chemicals in Laboratories, Definitions."

Laboratory-scale experimentation with nanoscale materials has been the subject of four DOE EAs, in which the Department has analyzed the construction and operation of nanomaterials facilities. DOE has determined that, with appropriate controls in place (as specified in the proposed categorical exclusion and described above), these activities would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

DOE is particularly interested in receiving comments on this proposed categorical exclusion.

B3.16 Research Activities in Salt Water and Freshwater Environments

DOE proposes a new categorical exclusion for small-scale, temporary surveying, site characterization, and research actions to be performed in salt water and freshwater environments. DOE proposes limiting the actions covered by this categorical exclusion to the acquisition of rights-of-way, easements, and temporary use permits; data collection, environmental monitoring, and nondestructive research programs; resource evaluation activities; collection of various types of data and samples; installation of monitoring and recording devices; installation of equipment for flow testing of existing wells; and ecological and environmental research in a small area.

DOE proposes specifically to exclude the construction or installation of permanent facilities or devices and to exclude the drilling of resource exploration or extraction wells. In addition, DOE has included several limits on the type, scope, and location of covered actions to protect the aquatic environment from potential significant impacts.

DOE proposes to limit the covered actions in this categorical exclusion through the following conditions. Covered actions under this categorical exclusion would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and

best management practices. Furthermore, none of the above activities would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a recognized area of high biological sensitivity, or outside those areas if the activities would have the potential to cause significant impacts within those areas. Additionally, no permanent facilities or devices would be constructed or installed. The categorical exclusion also lists other factors, specific to aquatic environments, to be considered by proponents of covered actions before applying this categorical exclusion to ensure that the activities would not have the potential to cause significant impacts.

DOE has determined that, subject to the proposed limitations, the activities would not have the potential to cause significant impacts. DOE is particularly interested in receiving comments on this categorical exclusion due to heightened sensitivity to activities in the salt water environment in light of recent oil-related incidents. (*See* the Technical Support Document.)

Categorical Exclusions Applicable to Power Resources (B4)

DOE proposes to make a number of recurring changes to the categorical exclusion provisions applicable to power resources. In reference to adding electric power resources (such as wind farms) into an electric power system, DOE proposes to use the term "interconnection" rather than the term "integration" now used in its existing classes of actions. "Interconnection" is the current term used in the electric transmission field for such actions. DOE, therefore, proposes changes to the following provisions: B4.1, B4.11, B4.12, B4.13.

DOE proposes to delete references to "main transmission system" in its existing classes of actions as unnecessary because DOE actions would only apply to its own transmission system. DOE, therefore, proposes changes to the following provisions: B4.11, B4.12.

DOE proposes to add pipeline rights-of-way as locations where actions could occur that are now categorically excluded or proposed for categorical exclusion in previously developed or disturbed transmission line rights-of-way. The impacts from siting, constructing, operating, or decommissioning actions in these linear rights-of-way are essentially similar. DOE, therefore, proposes changes to the following provisions: B4.7, B4.12. (DOE also proposes a similar change to EA class of actions C4.)

B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE proposes to simplify the description of the scope of this categorical exclusion, without changing the scope. The categorical exclusion would still apply to electric power contracts, policies, and plans that do not involve a new generation resource and do not involve changes in the normal operating limits of existing generation resources. DOE proposes to delete the existing reference to "excess electric power" as unnecessary as it simply applies to power that is available for transmission. DOE is proposing changes to its corresponding classes of actions for EAs (C7) and EISs (D7), as discussed below in Section IV.F and IV.G, respectively.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B4.4 Power Marketing Services and Activities

DOE proposes to clarify this categorical exclusion by adding "power management activities" to its existing categorical exclusion for power marketing services to indicate that the activities that are appropriately categorically excluded do not necessarily need to be taken in the context of marketing power. The existing categorical exclusion was established based on the experience of DOE's power marketing administrations, but has been appropriately applied recently by other elements of the Department, for example, in evaluating actions under the American Recovery and Reinvestment Act. The proposed change would provide transparency to DOE's application of this categorical exclusion, and DOE has determined that the covered actions would not have the potential to cause significant impacts.

B4.6 Additions and Modifications to Transmission Facilities

DOE proposes to add "load shaping projects (such as the installation and use of flywheels and battery arrays)" to the list of example actions in this categorical exclusion. With the wider deployment and accompanying improvement in load shaping technologies, DOE's experience indicates that these actions fit within the scope of this categorical exclusion.

B4.7 Fiber Optic Cable

DOE proposes that certain actions associated with adding fiber optic cable to transmission facilities (such as vaults and pulling and tensioning sites) be within the scope of this categorical exclusion with certain limitations. DOE has found that it is often necessary to place vaults and pulling and tensioning sites outside of rights-of-way. DOE has determined that, if vaults or such sites are in nearby previously disturbed or developed areas, they would not have the potential to cause significant environmental impact.

B4.9 Multiple Use of Transmission Line Rights-of-Way

DOE proposes to add examples of crossing agreements affecting a transmission facility's rights-of-way that DOE has determined are in the scope of this categorical exclusion, namely natural gas pipelines, communications cables, and roads.

B4.10 Removal of Electric Transmission Lines and Substations

DOE proposes to add "abandonment" and "restoration" of rights-of-way to the list of activities in this categorical exclusion, because DOE has determined that these actions, which generally follow the removal of electric transmission lines and substations, would not have the potential to cause significant impacts.

B4.11 Electric Power Substations and Interconnection Facilities

DOE proposes to add interconnection facilities to its categorical exclusion for construction or modification of electric power substations because the facilities have similar equipment and function. Substations switch, step down, or regulate voltage of electricity being transmitted, and may serve as controls and transfer points on a transmission system; interconnection facilities add electric power resources to transmission systems through similar functions.

DOE proposes that actions under this categorical exclusion, instead of being limited to those that do not interconnect a new generation resource (under the existing categorical exclusion), be limited to interconnecting new generation resources that meet two conditions: The new generation resource (1) would be eligible for categorical exclusion under the DOE NEPA regulations (that is, under proposed categorical exclusions for combined heat and power or cogeneration systems (B5.14), solar energy (B5.16 and B5.17), wind energy (B5.18), biomass power plants (B5.20), methane gas recovery and utilization systems (B5.21) and drop-in hydroelectric systems (B5.24)), and (2) would be equal to or less than 50

average megawatts (which is considered a major resource under the Northwest Power Act).

DOE is also proposing to delete actions regarding construction, upgrading, or rebuilding transmission lines from this categorical exclusion because substation actions do not necessarily involve transmission line actions. Categorically excluded transmission line actions are addressed in proposed B4.12 and B4.13.

DOE is proposing to delete the restriction that facilities under this categorical exclusion be limited to no more than 230 kilovolts because DOE has determined that voltage of a substation or interconnection facility is not a determinant of the potential for significant environmental impacts.

In response to the Department's December 2009 Request for Information, one commentor suggested that DOE categorically exclude modifications and upgrades to existing substations to accommodate electricity generated from renewable energy sources, to the extent that an upgrade does not increase the overall capacity of the substation or the disturbed areas associated with the substation, noting that additional capacity is needed at substations throughout the electric grid. DOE notes that it is proposing to delete the restriction that facilities under this categorical exclusion be limited to no more than 230 kilovolts.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B4.12 Construction of Transmission Lines

DOE proposes to incorporate within the scope of categorical exclusion B4.12 an action currently addressed in the existing categorical exclusion B4.11, that is "relocation of existing electric transmission lines approximately 20 miles in length or less." By doing so, transmission line construction and rebuilding activities will be consolidated in categorical exclusions B4.12 and B4.13, rather than also included in categorical exclusion B4.11, which predominantly relates to substations and interconnection facilities. DOE's long-term experience with electric transmission line construction indicates that the approximately 10-mile limit for categorical exclusion of transmission line construction outside of a previously disturbed or developed right-of-way, and the approximately 20-mile limit for categorical exclusion of transmission line in a previously disturbed right-of-way, have been reliable guides to the appropriate level of NEPA review for the actions.

DOE proposes that actions under this categorical exclusion, instead of being limited to those that do not interconnect a new generation resource (as under the existing categorical exclusion), be limited to interconnecting new generation resources that meet the two conditions discussed with respect to categorical exclusion B4.11.

In response to the Department's December 2009 Request for Information, one commentor suggested that the addition of transmission lines to existing transmission line or pipeline rights-of-way be categorically excluded. The commentor noted that additional transmission capacity is required to move electricity generated by renewable resources to population centers and that adding that capacity in an existing right-of-way will have very little environmental impact. DOE agrees and does not restrict the addition of transmission lines to an existing transmission or pipeline right-of-way if the limitations specified in the categorical exclusion are met.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B4.13 Upgrading and Rebuilding Existing Transmission Lines

DOE proposes to continue to categorically exclude the upgrading and rebuilding of existing transmission lines of approximately 20 miles in length or less (including minor relocations of small segments of such lines), as under the existing categorical exclusion B4.13. DOE also proposes to categorically exclude the use of the upgraded or rebuilt lines for the interconnection of new generation resources that meet the two conditions discussed with respect to categorical exclusion B4.11. Further, DOE proposes to delete the purposes for which minor relocations of the existing line may occur.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities (B5)

B5.1 Actions To Conserve Energy or Water

In B5.1, DOE proposes four types of changes to the existing categorical exclusion: (1) Adding examples to better represent the type of energy conservation actions, including those for which DOE provides financial assistance, that fall within the scope of this categorical exclusion, (2) adding actions to conserve water, (3) deleting reference to renewable energy research and development because DOE is proposing separate categorical exclusions for those actions (under B5.15 and B5.25 below), and (4) including new B5.1(b).

In B5.1(a), DOE proposes to clarify the scope of the categorical exclusion by providing additional examples of conservation actions similar in nature to the existing examples, such as weatherization, energy efficiency for vehicles and transportation (such as fleet change out), power storage (such as flywheels and batteries, generally less than 10 MW), and transportation management systems (such as traffic signal control systems). DOE's experience with these proposed covered actions demonstrate that they fit within the scope of the categorical exclusion. In addition, to ensure that the categorical exclusion would not encompass actions with potentially significant impacts on the human environment, DOE proposes to clarify that the actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Also, DOE proposes to clarify that the categorical exclusion could also involve actions in the academic or institutional sectors.

In B5.1(b), DOE proposes to include rulemakings that establish energy conservation standards in the scope of this categorical exclusion. DOE has prepared numerous EAs and FONSIs for rulemakings that establish energy conservation standards for consumer products and industrial equipment and has determined that, within the limitations on the scope of actions that could be taken under the proposed categorical exclusion, establishment of such standards would not have the potential to cause significant impacts. The limitations on scope of actions concern changes in manufacturing infrastructure, uses of available resources, disposal, and energy consumption. (*See* the Technical Support Document.)

DOE is particularly interested in receiving comments on B5.1(b) of this categorical exclusion.

B5.2 Modifications to Pumps and Piping

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to oil, gas, and geothermal facilities, but by providing examples of materials that could be conveyed by pump and piping configurations (that is, by adding as examples, air, brine, carbon dioxide, produced water, steam, and water to the currently listed materials). DOE also proposes to clarify

that the existing reference to "gas" includes natural gas, hydrogen gas, and nitrogen gas. DOE has determined that the environmental impacts resulting from modifications to pump and piping configurations on systems conveying such materials would be similar to impacts from modifications to the pump and piping configurations on systems carrying the existing categorically excluded materials. DOE's experience with these materials has demonstrated that modifying such pump and piping configurations would not have the potential to cause significant impacts.

B5.3 Modification or Abandonment of Wells

DOE proposes to broaden the scope of this categorical exclusion for storage and injection wells by not limiting the wells to those for oil, brine, geothermal, and gas wells, but by adding these wells as examples: Carbon dioxide, coalbed methane, and gas hydrate wells. DOE's experience has demonstrated that actions associated with the modification and abandonment (including plugging) of carbon dioxide and similar wells normally do not have the potential to cause significant impacts. DOE is proposing to limit use of the categorical exclusion to situations where there is low potential for seismicity, subsidence, and contamination of freshwater aquifers and where the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. DOE is also proposing to clarify that "gas" in the existing categorical exclusion refers to natural gas.

B5.4 Repair or Replacement of Pipelines

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to actions including oil, produced water, brine, and geothermal pipelines, but also to exclude repair and replacement actions on pipelines carrying materials similar in nature (such as air, carbon dioxide, hydrogen gas, natural gas, nitrogen gas, steam, and water). In DOE's experience, the conveyance of the proposed additional materials similar to those currently categorically excluded normally does not pose a potential to cause significant impacts. DOE also proposes to clarify that upgrading, rebuilding, and minor relocation may be involved in repair or replacement of pipelines. Further, DOE proposes to list Army Corps of Engineer permits as one type of requirement that may apply to these actions, while also acknowledging that there may be others.

B5.5 Short Pipeline Segments

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to oil, steam, geothermal or natural gas resources, but by providing additional examples (air, brine, carbon dioxide, hydrogen gas, nitrogen gas, produced water, and water) of materials potentially conveyed by pipeline segments under this categorical exclusion. The potential impacts resulting from pipelines conveying the additional materials would be similar to those from the existing categorically excluded materials. DOE's experience conveying these materials has demonstrated that they would not have the potential to cause significant impacts.

DOE further proposes to remove the limitation that pipelines must be within a single industrial complex. DOE proposes to remove that limitation because potential impacts do not depend on whether the action is conducted within an arbitrary boundary. DOE is therefore proposing to replace the reference to "DOE facilities" with references to "existing source facilities" and "existing receiving facilities." Categorically excluded actions are limited to short pipelines, which DOE proposes be generally less than 20 miles in length in previously developed or disturbed areas.

B5.6 Oil Spill Cleanup

DOE is proposing to clarify that the National Oil and Hazardous Substances Pollution Contingency Plan is not necessarily the only applicable requirement for oil spill cleanup by making this an example of an applicable requirement.

B5.7 Import or Export Natural Gas, With Operational Changes

DOE proposes to add disapprovals to the current scope (approvals) for consistency with existing classes of actions C13, D8, and D9.

B5.8 Import or Export Natural Gas, With New Cogeneration Powerplant

DOE proposes to add disapprovals to the current scope (approvals) for consistency with existing classes of actions C13, D8, and D9. DOE proposes to include in the scope of this categorical exclusion pipelines generally less than 20 miles in length in previously disturbed or developed rights-of-way.

B5.10 Certain Permanent Exemptions for Existing Electric Powerplants

DOE proposes to delete two references to provisions of the Powerplant and Industrial Fuel Use Act as those provisions have been deleted from the Act.

B5.12 Workover of Existing Wells

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to oil, gas, and geothermal wells, but by providing additional examples (brine, carbon dioxide, coalbed methane and gas hydrate) of wells that could be restored to functionality. DOE's experience with these materials has demonstrated that the potential impacts would be similar in nature to the impacts of wells using materials named in the existing categorical exclusion and that workover of such wells would not have the potential to cause significant impacts. In addition, DOE is proposing to limit use of the categorical exclusion to situations where there is low potential for seismicity, subsidence, and contamination of freshwater aquifers, and where the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. DOE is also proposing to clarify that "gas" in the existing categorical exclusion refers to "natural gas."

B5.13 Experimental Wells for the Injection of Small Quantities of Carbon Dioxide

DOE proposes a new categorical exclusion for experimental wells for the injection of small quantities of carbon dioxide in locally characterized geologically secure storage formations at or near existing carbon dioxide sources. The activities encompassed in the new proposed categorical exclusion are intended to help determine the suitability of geological formations for large-scale sequestration, as information from small-scale projects can be used to ensure that commercial-scale projects can be conducted safely and in an environmentally sound manner.

The proposed categorical exclusion is supported by DOE's National Energy Technology Laboratory's experience with carbon sequestration wells, through DOE-directed research projects and collaboration with the nationwide network of regional carbon sequestration partnerships tasked with determining the best technologies for carbon capture, storage, and sequestration. Through this work, DOE has gained substantial experience with small-scale carbon sequestration, showing that these projects can be managed safely and would not have the potential to cause significant impacts. In addition, the proposed categorical exclusion is supported by FONSIs for

three DOE EAs for projects with scales ranging up to one million tons of carbon dioxide over the lifetime of the project (typically one to four years).

Based on experience with small-scale projects, DOE proposes that the injection of carbon dioxide under this categorical exclusion be limited to, in aggregate, less than 500,000 tons over the duration of a project. In addition, DOE also proposes a number of conditions that the project must meet in order for the activity to be categorically excluded. For example, the proposed categorical exclusion would require that characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers. DOE's proposed limitations will ensure that injection of carbon dioxide at this scale would not have significant impacts. (*See* the Technical Support Document.)

DOE is particularly interested in receiving comments on this categorical exclusion, including the limit of 500,000 tons of carbon dioxide over the duration of the project.

B5.14 Combined Heat and Power or Cogeneration Systems

DOE proposes a new categorical exclusion for the conversion to, and replacement or modification of, combined heat and power or cogeneration systems at existing facilities provided that the action would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.

DOE has determined that combined heat and power or cogeneration system activities under this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these systems would be modifications to existing systems, and thus generally would not involve more than minor changes to facility footprints and do not involve major new construction, and (2) these systems would improve operating efficiency (such as making use of otherwise waste heat) and thus would be designed to lessen potential impacts.

B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects

As part of DOE's proposal to clarify and focus existing categorical exclusion B5.1 on energy efficiency and conservation actions (including research and development-related actions), DOE proposes a separate categorical exclusion for small-scale renewable energy research and development and pilot projects. In doing so, DOE proposes to limit the covered actions to those in previously disturbed and developed areas and to emphasize that such actions would be in accordance with applicable requirements and incorporate appropriate controls and practices. *See also* B5.25 for small-scale renewable energy research and development and pilot projects in salt water and freshwater environments.

In addition, this proposal is responsive to a commentor's suggestion to have a categorical exclusion for small-scale pilot projects for renewable energy generation, modeled on DOE's existing categorical exclusion B6.2 for pilot-scale waste collection and treatment facilities.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.16–B5.24

As part of DOE's proposal to clarify and focus existing categorical exclusion B5.1 on energy efficiency and conservation actions, and in response to commentors' suggestions to include more explicitly renewable energy technologies, DOE is proposing several new categorical exclusions. DOE proposes eight new categorical exclusion classes of actions involving renewable energy technologies, as described below. The proposed categorical exclusions apply to the installation, modification, operation, and removal of small-scale, commercially available renewable energy technologies. DOE proposes to specify conditions by technology (*e.g.,* wind) to ensure appropriate limitations, but does not generally set limits on energy output because DOE experience and data review suggest that the potential for significant impacts is more closely related to the site selected for a renewable energy project and the interaction of resources at a selected site with the renewable technology. DOE has proposed specific limitations for these categorical exclusions to ensure that any renewable energy technology project that would have the potential to cause significant impacts to particular resources would be identified as outside the scope of the categorical exclusion. Further, DOE proposes one new class of actions involving electric vehicle charging stations.

The proposed categorical exclusions in B5.16–B5.24 identify many of the types of projects for which DOE has made categorical exclusion determinations based on existing categorical exclusion B5.1. The actions listed in these proposed categorical exclusions are also consistent with categorical exclusions promulgated by other Federal agencies, EAs and FONSIs prepared by DOE and other Federal agencies, the opinions of subject matter experts, and private sector experience developing and deploying renewable energy technologies. DOE has determined that the activities under these categorical exclusions, when subject to the proposed limitations, would not have the potential to cause significant impacts because the categorical exclusions apply specifically to systems that are: (1) Located on or adjacent to existing structures, or on previously developed or disturbed land, (2) sited in accordance with local land use and zoning requirements, and (3) designed to incorporate appropriate control technologies and best management practices to lessen potential impacts.

The proposed categorical exclusions are responsive to the numerous suggestions that DOE received, both from within DOE and in response to its December 2009 Request for Information, to include explicitly renewable energy technologies and associated equipment in its categorical exclusions. Several commentors also suggested that DOE categorically exclude actions intended to "co-locate renewables" or to support "distributed generation projects." These suggestions describe similar actions that: (1) Support the operation of an existing facility by providing a renewable energy source on-site, (2) would be compatible with existing land use, and (3) would require minimal to no expansion of the footprint of an existing facility. As a result, DOE's review of available data led it to propose to exclude select small-scale, renewable energy technology projects, under specified proposed conditions, for the purpose of providing a renewable energy generation capability to existing facilities (specifically, B5.16–B5.21).

B5.16 Solar Photovoltaic Systems

The actions listed in categorical exclusion B5.16 apply to the installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other existing structure (*e.g.,* covered parking facility), or on land generally comprising less than 10 acres. The actions listed are consistent with DOE and other Federal agency experience with "co-located" solar photovoltaic energy projects generally comprising less than 10 acres within a previously disturbed or developed area, categorical exclusion determinations DOE has made based on existing regulations, categorical exclusions

promulgated by other Federal agencies, EAs and FONSIs prepared by DOE and other Federal agencies, and the opinions of subject matter experts. (*See* the Technical Support Document.)

DOE has determined that the solar photovoltaic system activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because (1) these are systems located on or adjacent to existing structures, or on previously developed or disturbed land, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these systems generally would support the operation of an existing facility (*e.g.,* providing an on-site, renewable electricity generation source). Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.17 Solar Thermal Systems

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of commercially available small-scale solar thermal systems (*e.g.,* solar hot water systems) at an existing facility or on land generally comprising less than 10 acres within a previously disturbed or developed area. These actions are consistent with categorical exclusion determinations DOE has made based on existing regulations and EAs and FONSIs prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the solar thermal system activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because (1) these are small-scale systems located on or contiguous to an existing building, or in a previously developed or disturbed area, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these systems generally would support the operation of an existing building (*e.g.,* providing an on-site, renewable source of energy for heat). Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.18 Wind Turbines

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of small (*i.e.,* generally 200 feet in height or less when measured from ground to maximum vertical blade rotation), commercially available wind turbines. Such turbines must be located within previously disturbed or developed areas; more than 10 miles from an airport or aviation navigation aid; and more than 1.5 nautical miles from National Weather Service or Federal Aviation Administration Doppler weather radar. Also such turbines must not have the potential to cause significant impacts to bird or bat species and must be appropriately designed and located so as to not cause significant impacts to persons (*e.g.,* noise or shadow flicker). These actions are consistent with categorical exclusion determinations DOE has made based on existing regulations, EAs and FONSIs prepared by DOE and other Federal agencies, and the opinions of subject matter experts. (*See* the Technical Support Document.)

DOE has determined that the activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because (1) these are small-scale wind turbines located within a previously developed or disturbed area, and thus generally involve no more than minor changes to an existing footprint and do not involve major new construction, and (2) these systems generally would support improved operation of an existing facility (*e.g.,* providing an on-site, renewable source of energy for electricity). Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.19 Ground Source Heat Pumps

DOE proposes a new categorical exclusion for commercially available, small-scale ground source heat pumps, designed to include appropriate leakage and contaminant control measures (*e.g.,* grouting) to support the operation of single facilities (*e.g.,* a school) or contiguous facilities (*e.g.,* an office complex), and sited only in previously disturbed and developed areas where associated activities (*e.g.,* drilling or geothermal water discharge) are regulated by a local, regional, or State authority. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations DOE has made based on existing regulations, categorical exclusions promulgated by other Federal agencies, and EAs and FONSIs prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the ground source heat pump system activities under this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these are systems located within or adjacent to existing structures, or on previously developed or disturbed land, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these systems generally would support the operation of an existing facility (*e.g.,* providing an on-site, renewable heating or cooling source) that would serve to lessen potential air emissions impacts when compared to energy provided by traditional fossil fuel (*e.g.,* coal) sources. DOE has proposed limitations for this categorical exclusion to ensure that any project that may result in a significant change in subsurface temperature would be outside the scope of the categorical exclusion.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.20 Biomass Power Plants

DOE proposes a new categorical exclusion for small-scale biomass power plants, designed using commercially available technologies for an average energy output of 10 megawatts, to support the operation of single facilities (*e.g.,* a school) or contiguous facilities (*e.g.,* an office complex), and sited within previously disturbed and developed areas. The actions listed in this proposed categorical exclusion are consistent with EAs and FONSIs prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the activities covered by this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these are systems located within or adjacent to existing structures, or within previously developed or disturbed areas, and thus generally involve no more than minor changes to facility footprints or land use, and (2) these systems generally would support the operation of an existing building or contiguous facilities (*e.g.,* providing an on-site, renewable electricity generation source). Such activities also may serve to lessen potential air emissions impacts

when compared to electricity generated by fossil fuel (*e.g.,* coal) sources. DOE has proposed limitations for this categorical exclusion to ensure that any project that may result in a significant increase in the quantity or rate of air emissions or have the potential to cause significant impacts to water resources would be outside the scope of the categorical exclusion.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.21 Methane Gas Recovery and Utilization Systems

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems on or contiguous to an existing landfill or wastewater treatment plant, or within a previously disturbed and developed area. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations for methane gas recovery and utilization technologies that DOE has made based on existing regulations.

DOE has determined that the methane recovery and utilization system activities under this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these are modifications to existing waste disposal or treatment facilities, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these modifications generally would improve operating efficiency (*e.g.,* making use of otherwise waste gas for energy production at existing facilities) and thus would be designed to lessen potential impacts. Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources. DOE has proposed limitations for this categorical exclusion to ensure that any project that may result in a significant increase in quantity or rate of air emissions would be outside the scope of the categorical exclusion.

B5.22 Alternative Fuel Vehicle Fueling Stations

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of fueling stations for compressed natural gas, hydrogen, ethanol or other commercially available biofuels that are located on the site of a current or former fueling station, or in a previously disturbed or developed area controlled by the owner of the existing facility and vehicle fleet the station is meant to service. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations DOE has made based on existing regulations for alternative fuel vehicle fueling technologies and an EA and FONSI prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the alternative vehicle fueling system activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because these are systems located at existing stations, or on previously developed or disturbed land, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction. These systems would support the operation and use of alternative fuel vehicles (*e.g.,* providing the fueling infrastructure necessary to support the use of vehicles run on alternative fuels). Such activities also may serve to lessen potential air emissions impacts when compared to traditional fossil fuel combustion engine vehicles.

B5.23 Electric Vehicle Charging Stations

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of electric vehicle stations within a previously disturbed or developed area. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations DOE has made based on existing regulations.

DOE has determined that the electric vehicle charging station activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because these are systems located on previously developed or disturbed land, and thus generally do not involve major new construction. These systems would support the use of electric vehicles (*e.g.,* providing infrastructure necessary to support current and future use of electric vehicles). Such activities also may serve to lessen potential air emissions impacts when compared to traditional fossil fuel combustion engine vehicles.

B5.24 Drop-in Hydroelectric Systems

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems where there would not be the potential for significant impacts to threatened and endangered species or significant impacts on water quality, temperature, flow, or volume.

The term "run-of-the-river" as used in this categorical exclusion refers to hydroelectric systems that would be fully dependent on the natural flow of the river or stream at the point of system installation; would have no water storage, such as in an impoundment; and would involve no water diversion from the stream or river. The term "drop-in" refers to prefabricated systems that are placed in a river or stream, not systems that are constructed in a river or stream such as a dam. Under this categorical exclusion, DOE envisions small turbines placed in a stream or river for small operations, where all energy would likely be consumed on-site (*e.g.,* for a home, ranch, or other small commercial operation) and unlikely to be put on the commercial grid. Hydroelectric systems capable of producing electricity for the commercial grid would likely be secured in a channel (requiring the use of heavy equipment), may require channel modification, and may have a potential to significantly affect fish, wildlife, habitat, and water flow and quality; these systems would be excluded from the scope of this categorical exclusion. The actions listed in this proposed categorical exclusion are consistent with the opinions of subject matter experts, including fish biologists with regulatory and fisheries management experience. (*See* the Technical Support Document.)

DOE has determined that the activities under this categorical exclusion would not have the potential to cause significant impacts when subject to the proposed limitations: involve no water storage or water diversion; be located only in areas upstream of a natural anadromous fish barrier (such as a waterfall that has historically prevented anadromous fish passage); and involve no major construction, modification of stream or river channels, or the use of heavy equipment. Projects in the scope of this categorical exclusion generally support adjacent uses with a renewable source of direct electricity production. Such activities also may serve to lessen potential air emissions impacts when compared to traditional systems where electrical energy is generated by fossil fuel sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Salt Water and Freshwater Environments

DOE proposes to create a new categorical exclusion for small-scale renewable energy research and development and pilot projects in salt water and freshwater environments. Research with respect to wave or tidal energy or the growth and harvest of algae as biomass for proof of concept purposes would be appropriate projects in this class of actions. However, as with B3.16, DOE proposes to impose similar limits on the scope and location of the activities to ensure that renewable energy research is conducted in a manner that would not have the potential to cause significant impacts. These actions are consistent with categorical exclusion determinations DOE has made based on existing regulations, EAs and FONSIs prepared by other Federal agencies, and the opinions of subject matter experts. (See the Technical Support Document.)

DOE proposes specifically to exclude the construction or installation of permanent facilities or devices and to exclude the drilling of wells for resource exploration or extraction. In addition, DOE has included several limits on the type, scope, and location of covered actions to protect the aquatic environment from potential significant impacts.

DOE proposes to limit the covered actions in this categorical exclusion through the following conditions. Covered actions under this categorical exclusion would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Furthermore, none of the above activities would occur (1) within areas of hazardous natural bottom conditions, or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a recognized area of high biological sensitivity, or outside those areas if the activities would have the potential to cause significant impacts within those areas. Additionally, no permanent facilities or devices would be constructed or installed. The categorical exclusion also lists other factors, specific to aquatic environments, to be considered by proponents of covered actions before applying this categorical exclusion to ensure that the activities would not have the potential to have significant impacts.

DOE is particularly interested in receiving comments on this categorical exclusion.

Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities (B6)

B6.1 Cleanup Actions

DOE proposes to remove the specified limit of 5 years duration for categorically excluded short-term, small-scale cleanup actions because in DOE's experience that duration has not been representative of the potential for significant environmental impacts. DOE proposes to retain a specified limit to cost, but to raise the limit from approximately $5 million to approximately $10 million, in light of the fact that this cost limitation has not been revised since 1996. DOE also proposes to add encapsulation, physical or chemical separation, and compaction to the examples of treatment methods. DOE proposes to change the text of the categorical exclusion from "would not affect future groundwater remediation" to "would not unduly limit future groundwater remediation" because a literal reading of the existing categorical exclusion would bar its use if there were any affect on future groundwater remediation.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B6.7 [Removed and Reserved: Granting/Denying Petitions for Allocation of Commercial Disposal Capacity]

Existing B6.7 refers to a DOE regulation that was repealed in 1995. That regulation implemented a provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which is no longer in effect. Therefore, DOE proposes deleting this categorical exclusion, marking B6.7 as "removed and reserved" in the regulations.

B6.10 Upgraded or Replacement Waste Storage Facilities

DOE proposes to identify "expansion" as within the scope of this categorical exclusion, which limits total facility size to 50,000 square feet.

F. Proposed Changes to Appendix C

For an explanation of recurring proposals applicable to the appendix C classes of actions, please see Section IV.B, Recurring Proposals, above, where they are discussed and the particular classes of actions affected are listed. The short titles listed below for particular classes of actions reflect DOE's proposed titles.

C2 [Removed and Reserved: Rate Increases More Than Inflation, Not Power Marketing]

DOE proposes to delete EA class of actions C2 because DOE has not prepared an EA and FONSI under C2.

C4 Upgrading, Rebuilding, or Construction of Electric Transmission Lines

DOE proposes changes to this class of actions to conform to the changes DOE is proposing for categorical exclusions B4.12 and B4.13. Proposed changes to C4 would address electric transmission lines of lengths greater than those to which categorical exclusions might apply.

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE proposes changes to this class of actions to conform to the changes DOE has proposed for categorical exclusion B4.1. This provision addresses the establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts and that would not be eligible for categorical exclusion under 10 CFR part 1021; (2) changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or (3) service to discrete new loads of less than 10 average megawatts over a 12-month period. DOE also proposes to delete the description that implies that this class of actions applies only to DOE power marketing operations and facilities at DOE sites.

DOE is particularly interested in receiving comments on the proposed revisions to this provision.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

DOE proposes changes to this class of actions to conform to the changes DOE is proposing for categorical exclusion B1.20. Proposed changes to C8 would address large-scale activities undertaken to protect cultural resources.

C11 Particle Acceleration Facilities

DOE proposes to change the parameters for when an EA would normally be required to conform to the changes DOE is proposing for categorical exclusion B3.10. Whether an EA would normally be required would depend upon the energy associated with the particle acceleration facility.

C12 Energy System Demonstration Actions

DOE proposes changes to this class of actions to conform to the changes DOE is proposing for categorical exclusion B3.6. Proposed changes to C12 would address "demonstration actions," which are outside the scope of B3.6.

C13 Import or Export Natural Gas Involving Minor New Construction

DOE proposes changes for consistency with categorical exclusions B5.7 and B5.8.

G. Proposed Changes to Appendix D

For an explanation of recurring proposals applicable to the appendix D classes of actions, please *see* Section IV.B, Recurring Proposals, above, where they are discussed and the particular classes of actions affected are listed. The short titles listed below for particular classes of actions reflect DOE's proposed titles.

D5 [Removed and Reserved: Main Transmission System Additions]

D6 [Removed and Reserved: Integrating Transmission Facilities]

DOE proposes deleting D5, Main transmission system additions, and D6, Integrating transmission facilities, because there is redundancy and ambiguity between D5 and D6 that makes them of limited utility. Furthermore, there is overlap between D5 (addition of new lines) and C4 (construction of new lines) in the current regulations, which makes it difficult to discern which category is appropriate for a specific project. DOE also proposes not to have EIS categories that correspond to the categorical exclusions and the EA class of actions that address the level of NEPA review for electric transmission facilities and lines (B4.11, B4.12, B4.13, and C4). Based on DOE experience, the level of NEPA review for transmission facilities and lines that are not categorically excluded is at least at an EA level, but does not necessarily warrant an EIS level. DOE has found that the determination whether an EA or an EIS is appropriate is project-specific (*e.g.,* type and size of facility) and site-specific (*e.g.,* site conditions, other facilities and lines in the area, or the proximity of residences). Working with its stakeholders, DOE has often successfully mitigated potentially significant impacts so that an EA level of review is often adequate. In those cases where an EA is not applicable, DOE completes an EIS, and the lack of an EIS category in this proposed rulemaking does not preclude such action in the future. (See the Technical Support Document.)

DOE is particularly interested in receiving comments on these provisions.

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE proposes changes to this class of actions to conform to changes that DOE is proposing for both categorical exclusion B4.1 and the EA class of actions C7. This provision addresses establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts; (2) changes in the normal operating limits of generation resources greater than 50 average megawatts; or (3) service to discrete new loads of 10 average megawatts or more over a 12-month period. DOE also proposes to delete the description that implies that this class of actions applies only to its power marketing operations and facilities at its sites.

DOE is particularly interested in receiving comments on the proposed revisions to this provision.

D8 Import or Export of Natural Gas Involving Major New Facilities

DOE proposes changes for consistency with categories B5.7, B5.8, and C13.

D9 Import or Export of Natural Gas Involving Major Operational Change

DOE proposes changes for consistency with categories B5.7, B5.8, and C13.

V. General Comments Received in Response to the December 2009 Request for Information

DOE reviewed and evaluated each of the suggestions provided by the 11 respondents to its December 2009 Request for Information, as discussed above in Section II. Many of the comments included proposals for new categorical exclusions and revisions to limit or expand existing categorical exclusions, or were related to other existing provisions in subpart D of the DOE NEPA regulations. In addition to comments related to specific provisions, which are discussed above in Section IV.C through IV.G, DOE received comments of a more general nature, not associated with a particular provision. These comments and DOE's responses are presented below.

Categorical exclusions, generally. In its Request for Information, DOE described categorical exclusions as categories of actions that normally do not have the potential, individually or cumulatively, to have a significant effect on the "human environment." One commentor expressed a concern that DOE focused too narrowly on the human environment and "seems to miss the true purpose of the NEPA process." In addition, a commentor stated that the DOE categorical exclusion process should "explicitly include recognition of the Department's trust and trustee duties and responsibilities that ensure actions evaluated for categorical exclusion do not adversely impact the environment or violate these responsibilities." DOE's characterization of a categorical exclusion in its Request for Information is consistent with the definition of categorical exclusion in the CEQ NEPA regulations (40 CFR 1508.4), and DOE applies the comprehensive interpretation of "human environment" as defined in the CEQ NEPA regulations (40 CFR 1508.14) "to include the natural and physical environment and the relationship of people with that environment."

Land transfers. A commentor stated that DOE should not use a categorical exclusion when land transfers have the potential to impact Tribal Nations' rights, uses, or historical, religious or cultural assets, or DOE should ensure that those rights are preserved and that there is adequate government-to-government consultation.

DOE conducts its government-to-government consultations with Tribal Nations in accordance with its American Indian Tribal Government Policy, as outlined in DOE Order 1230.2. With respect to Federally recognized Indian Tribe interests, also *see* Section IV.E for a discussion of appendix B(4) conditions that are integral elements of appendix B categorical exclusions.

Land and water contaminated with radioactive and/or hazardous materials. A commentor noted that many of DOE's facilities, and the land and water beneath these facilities, are contaminated with radioactive and/or hazardous materials. The commentor stated that DOE should not allow for the transfer or lease of contaminated facilities and land through a categorical exclusion. DOE is proposing changes to DOE's land transfer-related categorical exclusions. Proposed categorical exclusions B1.24 and B1.25 pertain to the transfer, lease, disposition, or acquisition of interests (personal property and real property). Both proposed B1.24 and B1.25 contain limitations such that they may not be applied if there is a "potential for release of substances at a level, or in a form, that could pose a threat to public health

and the environment." For further information, *see* the detailed discussion of proposed changes to A7, B1.24, and B1.25 in Section IV.D and IV.E, above.

Construction and operation of facilities. A commentor stated that "most construction of facilities (even temporary)" should not be performed under a categorical exclusion. Construction and operation under the Department's existing and proposed categorical exclusions are limited to certain types of small-scale facilities that DOE has determined would not have potential to cause significant impacts when the conditions specified in the categorical exclusion and the integral elements in appendix B(4) are considered. Under DOE's existing NEPA regulations these include, for example, support buildings (such as cafeterias), small-scale wastewater and surface water treatment facilities, and microwave and communications towers. DOE is now proposing to add recycling drop-off stations and small-scale educational facilities to that list. DOE has determined that, absent extraordinary circumstances, these types of actions are appropriately categorically excluded.

Mitigation actions. A commentor stated that mitigation actions, such as reseeding and revegetation, should not conflict with existing mitigation, restoration, and preservation activities or exacerbate environmental contamination, and that DOE's procedures for categorical exclusion determinations should include a checklist to ensure that the potential for such conflicts is considered in applying a categorical exclusion. DOE's existing and proposed categorical exclusion regulations require determinations that there are no extraordinary circumstances related to the proposal that may affect the significance of the proposal's environmental effects. The regulations also require that the proposal not be connected to other actions with significant impacts or related to other actions with cumulatively significant impacts. DOE believes that these existing procedures adequately address this concern.

Rulemaking process. A commentor stated that DOE should distribute draft categorical exclusion determinations and supporting documents to those who have specific interests or oversight responsibilities for DOE sites, providing a 30-day comment period. DOE respectfully disagrees with this proposal. Such a process would be counter to the purpose of a categorical exclusion, which is to expedite the environmental review process for proposed actions that normally do not require more resource intensive EAs or EISs. Before an agency can establish a categorical exclusion, however, an agency is required to provide an opportunity for public review of those actions that it intends to exclude. Through the publication of this notice of proposed rulemaking, DOE is providing its proposed changes to the public and providing an opportunity for public review and comment. Additionally, DOE is required to consult with CEQ on conformity of the proposed categorical exclusions with NEPA and the CEQ NEPA implementing procedures.

A commentor requested that DOE's December 2009 Request For Information "not be used to remove types of projects that are currently required to perform an EA or EIS." As discussed further in Section IV.G, DOE is proposing to remove two classes of actions that are now listed as normally requiring an EIS, D5, Main transmission system additions, and D6, Integrating transmission facilities. DOE has found that, for the most part, it has been able to mitigate impacts such that those impacts are not significant. DOE is proposing to remove one EA class of actions (C2, Rate increases more than inflation, not power marketing). DOE has not been able to identify any proposed action that has been included in that class of actions.

New technologies. A commentor requested that "if the effects of new technologies in the private and public sectors are going to influence" the proposed categorical exclusions, the technologies and their impacts must be fully explained. DOE has based its proposed categorical exclusions on its previous NEPA reviews, expert advice, categorical exclusions of other Federal agencies, and private sector experience, and it has explained the basis for its proposed decisions both here and in the Technical Support Document.

Geothermal. A commentor requested that no further regulations be promulgated that would make it more difficult to obtain permitting for the installation of geothermal wells. The commentor also emphasized the "tremendous energy savings" provided by geothermal heat pumps for heating and cooling buildings.

DOE currently has an existing categorical exclusion, B3.7, for the siting, construction, and operation of new infill exploratory and experimental (test) wells, including geothermal wells, drilled in a geological formation that has existing operating wells. Although DOE is proposing to add certain restrictions, DOE does not believe these changes would make the permitting process for geothermal wells more difficult. In addition, DOE is proposing a new categorical exclusion, B5.19, for the installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities or contiguous facilities. (See discussion of B3.7 and B5.19 in Section IV.E, above.)

Renewable energy projects. A commentor suggested that DOE adopt a "fast-track" review process for renewable energy projects, similar to a process that the Bureau of Land Management, an agency within the Department of the Interior, has adopted. DOE is a cooperating agency with the Bureau of Land Management on several of its EISs for renewable energy proposals (for example, for proposals for which an application for a loan guarantee has been submitted to DOE), and is familiar with the Bureau's process. In other cases, DOE's Program Offices (for example, the Office of Electricity Delivery and Energy Reliability, the Loan Program Office, and Bonneville Power Administration) work as expeditiously as possible on NEPA and other necessary reviews (such as electric system reliability review and financial review) needed before project approval. Part of DOE's aim in proposing updates to its categorical exclusions is to expedite the environmental review process for proposals that normally do not require more resource intensive EAs or EISs. DOE's proposed new categorical exclusions include (1) eight specifically for installation, modification, operation, and removal of commercially available renewable energy technologies (as listed in the proposed categorical exclusions B5.16 to B5.22, inclusive, and B5.24) and (2) small-scale renewable energy research and development and pilot projects (B5.15 and B5.25). DOE expects that the use of these categorical exclusions will allow for more expeditious NEPA review for projects that fit within the classes of actions.

Biofuels production projects. A commentor suggested that DOE categorically exclude new biofuels production projects, "provided that certain conditions are met with respect to air and water emissions, water consumption and other high-level considerations." At this time, DOE is not proposing a categorical exclusion for commercial-scale biofuels production projects. First, the Department conducted a survey of Federal agencies' NEPA regulations and did not identify existing (or proposed) categorical exclusions for new commercial biofuels projects that could guide DOE in proposing an appropriate scope for such

a category. Second, a Notice of Funds Availability published by the U.S. Department of Agriculture's Rural Business Cooperative Service regarding new construction and retrofitting of advanced biofuels facilities (non-corn ethanol) concluded that such facilities would not meet the classification of a categorical exclusion (75 FR 25076; May 6, 2010). DOE, nevertheless, is requesting input from the public as to whether a categorical exclusion for commercial-scale biofuel production projects would be appropriate, and, if so, what limits might be applicable (for example, throughput and operation parameters).

Consistency among Federal and State categorical exclusions. A commentor suggested that DOE should work with States to create consistency among Federal and State categorical exclusions because there is a disconnect between what the Federal government categorically excludes under NEPA and what States exclude under their environmental review provisions. DOE develops its categorical exclusions based on classes of actions it has identified that do not individually or cumulatively have a significant effect on the environment based on actions it has considered nationwide. DOE does not have any involvement in how a State assigns particular classes of actions to a particular level of environmental review. However, States have the opportunity to comment on an agency's proposed categorical exclusions and associated administrative records and also to consider whether to change their own categorical exclusions or other implementing procedures based on a Federal agency's exclusions. DOE welcomes comments from States on DOE's categorical exclusions and, in particular, as to a State's experience with similar exclusions.

Evaluation of greenhouse gases. A commentor noted that CEQ had stated that it sees no basis for excluding greenhouse gases from NEPA jurisdiction. The commentor suggested that DOE have additional categorical exclusions "to protect against abuse of this expansive new jurisdiction by entities seeking to stop or stall projects." In proposing 20 new categorical exclusions and modifying others to promote efficiency in the NEPA process while ensuring protection of the environment, DOE has considered the potential for significant environmental impacts, including potential impacts from greenhouse gas emissions. DOE's approach in this regard is consistent with draft guidance issued in February 2010 by CEQ, Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (*http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf*). The draft guidance states, "In many cases, the [greenhouse gas] emissions of the proposed action may be so small as to be a negligible consideration. Agency NEPA procedures may identify actions for which [greenhouse gas] emissions and other environmental effects are neither individually or cumulatively significant. 40 CFR 1507.3." The draft guidance further states that, in proposing that the NEPA process incorporate consideration of both the impact of an agency action on the environment through the mechanism of greenhouse gas emissions and the impact of changing climate on that agency action, "This is not intended as a 'new' component of NEPA analysis, but rather as a potentially important factor to be considered within the existing NEPA framework."

Level of involvement necessary to require a NEPA review (or "Federal handle"). A commentor requested that DOE provide guidance on the level of Federal involvement necessary to categorize a project as "Federal," thereby triggering an environmental review under NEPA. Specifically, the commentor suggested that DOE consider setting a minimum threshold of 10% of the overall project budget as a funding level that would trigger NEPA, and further, that only Federal funds actually allocated to the project should be counted (that is, budgeted or anticipated funds should be excluded in determining the level of Federal financing). The commentor requested that factors be specified to help determine what level of Federal control or involvement is needed for NEPA to be triggered.

In determining whether an action constitutes a major Federal action for purposes of NEPA, DOE considers the degree of Federal control over or involvement in a project. As part of this consideration, DOE examines the total amount and percentage of Federal funding among other factors. In many cases, the fact that Federal government funding is in the range of 10 percent (or less) of total project costs will make the percentage of Federal funding an important factor in finding that an action is not a major Federal action. These are essentially the same factors suggested by the commentor. DOE also may consider other factors specific to the proposed action at issue. DOE finds this case-by-case approach workable and consistent with applicable precedent and does not propose to establish specific criteria through this proposed rulemaking for determining whether a proposed action constitutes a major Federal action.

Uranium mineral activities. A commentor, noting interest in uranium mineral exploration, development, and reclamation activities on DOE uranium leases in Western Colorado, stated that "activities related to mining and mineral exploration on Department of Energy mineral leases should remain barred from categorical exclusion." DOE's proposed revisions to the Department's NEPA regulations would not allow categorical exclusion of uranium mineral development. However, under certain conditions, some exploration and reclamation actions could be categorically excluded under DOE's existing and proposed categorical exclusions, such as, categorical exclusion B3.1, Site characterization and environmental monitoring, and categorical exclusion B6.1, Cleanup actions.

Cost parameters for environmental review under NEPA. A commentor suggested that the estimated cost of a project be factored into the categorical exclusion process. Specifically, the commentor suggested that DOE establish an upper limit of $25 million (estimated cost) for a proposed action that can be categorically excluded and a lower limit of $100 million (estimated cost) over which a proposed action requires an EIS. DOE has determined that cost is generally not a reliable indicator of environmental impacts and is not proposing to establish general cost parameters to dictate the level of NEPA review in its regulations. One exception is categorical exclusion B6.1, which contains a cost limit for small-scale, short-term cleanup actions. *See* discussion of B6.1 in Section IV.E above.

VI. Procedural Requirements

A. Review Under Executive Order 12866

Today's proposed rule has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under National Environmental Policy Act

In this proposed rule, DOE proposes amendments that establish, modify, and clarify procedures for considering the environmental effects of DOE actions within DOE's decisionmaking process,

thereby enhancing compliance with the letter and spirit of NEPA. DOE has determined that this proposed rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6, because it is a strictly procedural rulemaking and no extraordinary circumstances exist that require further environmental analysis. Therefore, DOE has determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an EA or an EIS.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://gc.doe.gov*.

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed revisions to 10 CFR part 1021 streamline the environmental review for proposed actions, resulting in a decrease in burdens associated with carrying out such reviews. For example, the proposed revisions are expected to reduce in aggregate the number of EAs that DOE is required to prepare, thus reducing the burden on applicants to prepare an EA for DOE's consideration, pay for the preparation of an EA, and/or provide environmental information for DOE's use in preparing an EA. During the past 10 years, DOE has completed approximately 30 EAs per year. The number of EAs completed each year has not varied significantly. However, in 2010, DOE expects to complete more than 75 EAs which reflect an increase in the number of proposed projects as a result of the American Recovery and Reinvestment Act. DOE expects the number of EAs it prepares after 2010 will be closer to historical norms. The cost per EA has ranged from $3,000 to $630,000; the average and median cost has been $100,000 and $65,000, respectively. DOE expects that although the number of EAs it prepares annually could increase in response to recent emphasis on certain program areas, such as renewable energy technologies, proposed new categorical exclusions in these areas would reduce the number of EAs that might otherwise be required. In addition, the costs of making a categorical exclusion determination are less than those to prepare an EA. DOE estimates that DOE's administrative costs for research, staff time, and Web-posting for a categorical exclusion determination would most likely be less than $2,000 on average. Applicants may sometimes incur costs in providing environmental information DOE requires when making a categorical exclusion determination. While DOE does not have data on such applicant costs, DOE estimates that such costs would be similar to DOE's costs for a categorical exclusion determination, and much less than the cost of a typical EA. Although the number of EAs that would be avoided and the associated costs saved by applicants is uncertain, the proposed revisions are expected to result in a net decrease in environmental review costs and thus, are expected to have a beneficial cost impact. DOE estimates that approximately 15 percent of the EAs prepared in the last 10 years were funded by applicants, while the other 85 percent were funded by DOE. Although DOE does not have data on what percentage of those applicants qualified as small entities, a beneficial cost impact is expected to be felt by entities of all sizes.

On the basis of the foregoing, DOE tentatively certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under Paperwork Reduction Act

This proposed rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

E. Review Under Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments. 2 U.S.C. 1534.

The proposed rule would amend DOE's existing regulations governing compliance with NEPA to better align DOE's regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current technologies and regulatory requirements. The proposed rule would not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has

concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) Is a significant regulatory action under Executive Order 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Issued in Washington, DC, on December 20, 2010.

Scott Blake Harris,

General Counsel.

For the reasons stated in the Preamble, DOE proposes to amend part 1021 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 4321 *et seq.;* 50 U.S.C. 2401 *et seq.*

2. Section 1021.311 is amended by revising the first sentence in paragraph (d) and revising paragraph (f) to read as follows:

§ 1021.311 Notice of intent and scoping.

* * * * *

(d) Except as provided in paragraph (f) of this section, DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. * * *

* * * * *

(f) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS, the provisions of paragraphs (a) through (e) of this section shall apply.

3. Section 1021.322 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 1021.322 Findings of no significant impact.

* * * * *

(f) * * * A revised FONSI is subject to all provisions of this section.

4. Section 1021.331 is amended by revising paragraph (b) to read as follows:

§ 1021.331 Mitigation action plans.

* * * * *

(b) In certain circumstances, as specified in § 1021.322(b)(1), DOE shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant.

* * * * *

5. Subpart D is revised to read as follows:

Subpart D—Typical Classes of Actions

Sec.
1021.400 Level of NEPA review.
1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).
Appendix A to Subpart D of Part 1021—Categorical Exclusions Applicable to General Agency Actions
Appendix B to Subpart D of Part 1021—Categorical Exclusions Applicable to Specific Agency Actions
Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs
Appendix D to Subpart D of Part 1021—Classes of Actions That Normally Require EISs

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (appendices A and B to this subpart D);

(2) Require preparation of an EA, but not necessarily an EIS (appendix C to this subpart D); or

(3) Require preparation of an EIS (appendix D to this subpart D).

(b) Any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal.

(d) If a DOE proposal is not encompassed within the classes of actions listed in the appendices to this subpart D, or if there are extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal, DOE shall either:

(1) Prepare an EA and, on the basis of that EA, determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is categorically excluded, DOE shall determine the following:

(1) The proposal fits within a class of actions that is listed in appendix A or B to this subpart D;

(2) There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources; and

(3) The proposal has not been segmented to meet the definition of a categorical exclusion. Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. The scope of a proposal must include the consideration of connected and cumulative actions, that is, the proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)), and is not precluded by 40 CFR 1506.1 or § 1021.211 of this part concerning limitations on actions during EIS preparation.

(c) All categorical exclusions may be applied by any organizational element of DOE. The sectional divisions in appendix B to this subpart D are solely for purposes of organization of that appendix and are not intended to be limiting.

(d) A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities).

(e) Categorical exclusion determinations for actions listed in appendix B shall be documented and made available to the public by posting online, generally within two weeks of the determination, unless additional time is needed in order to review and protect classified information, "confidential business information," or other information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Posted categorical exclusion determinations shall not disclose classified information, "confidential business information," or other information that DOE would not disclose pursuant to FOIA. (*See* also 10 CFR 1021.340.)

Appendix A to Subpart D of Part 1021—Categorical Exclusions Applicable to General Agency Actions

A1 Routine DOE Business Actions

Routine actions necessary to support the normal conduct of DOE business limited to administrative, financial, and personnel actions.

A2 Clarifying or Administrative Contract Actions

Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 Certain Actions by Office of Hearings and Appeals

Adjustments, exceptions, exemptions, appeals and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

A4 Interpretations and Rulings for Existing Regulations

Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Interpretive Rulemakings With no Change in Environmental Effect

Rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A6 Procedural Rulemakings

Rulemakings that are strictly procedural, including, but not limited to, rulemaking (under 48 CFR chapter 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

A7 [Reserved]

A8 Awards of Certain Contracts

Awards of contracts for technical support services, management and operation of a government-owned facility, and personal services.

A9 Information Gathering, Analysis, and Dissemination

Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site

characterization or environmental monitoring. (See *also* B3.1 of appendix B to this subpart.)

A10 Reports and Recommendations on non-DOE Legislation

Reports and recommendations on legislation or rulemaking that are not proposed by DOE.

A11 Technical Advice and Assistance to Organizations

Technical advice and planning assistance to international, national, State, and local organizations.

A12 Emergency Preparedness Planning

Emergency preparedness planning activities, including, but not limited to, the designation of onsite evacuation routes.

A13 Procedural Documents

Administrative, organizational, or procedural Policies, Orders, Notices, Manuals, and Guides.

A14 Approval of Technical Exchange Arrangements

Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations (including, but not limited to, assistance in identifying and analyzing another country's energy resources, needs and options).

A15 International Agreements for Energy Research and Development

Approval of DOE participation in international "umbrella" agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities.

Appendix B to Subpart D of Part 1021—Categorical Exclusions Applicable to Specific Agency Actions

B. Conditions That Are Integral Elements of the Classes of Actions in Appendix B

The classes of actions listed below include the following conditions as integral elements of the classes of actions. To fit within the classes of actions listed below, a proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a Federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by Federal, State, or local governments, or a Federally recognized Indian Tribe, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); State-listed endangered or threatened species or their habitat; and Federally-protected marine mammals and Essential Fish Habitat (Marine Mammals Protection Act; Magnuson-Stevens Fishery Conservation and Management Act);

(iii) Floodplains and wetlands (as defined in 10 CFR 1022.4, "Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions," or its successor);

(iv) Areas having a special designation such as Federally- and State-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests.

B1. Categorical Exclusions Applicable to Facility Operation

B1.1 Changing Rates and Prices

Changing rates for services or prices for products marketed by parts of DOE other than Power Marketing Administrations, and approval of rate or price changes for non-DOE entities, that are consistent with the change in the implicit price deflator for the Gross Domestic Product published by the Department of Commerce, during the period since the last rate or price change.

B1.2 Training Exercises and Simulations

Training exercises and simulations (including, but not limited to, firing-range training, small-scale and short-duration force-on-force exercises, emergency response training, fire fighter and rescue training, and decontamination and spill cleanup training) conducted under appropriately controlled conditions and in accordance with applicable requirements.

B1.3 Routine Maintenance

Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (including, but not limited to, pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed, provided that the activities would be conducted in a manner in accordance with applicable requirements. Custodial services are activities to preserve facility appearance, working conditions, and sanitation (such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal). Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Such maintenance may occur as a result of severe weather (such as hurricanes, floods, and tornados), wildfires, and other such events. Routine maintenance may result in replacement to the extent that replacement is in-kind and is not a substantial upgrade or improvement. In-kind replacement includes installation of new components to replace outmoded components, provided that the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

(a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall, ceiling, or floor repair or replacement;

(d) Reroofing;

(e) Plumbing, electrical utility, lighting, and telephone service repair or replacement;

(f) Routine replacement of high-efficiency particulate air filters;

(g) Inspection and/or treatment of currently installed utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces;

(k) Erosion control and soil stabilization measures (such as reseeding and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, "Radioactive Waste Management," or its successor;

(m) Repair and maintenance of transmission facilities, such as replacement

of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor;

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes);

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and

(p) Removal of debris.

B1.4 Air Conditioning Systems for Existing Equipment

Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

B1.5 Existing Steam Plants and Cooling Water Systems

Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds), provided that the improvements would not: (1) Create new sources of water or involve new receiving waters; (2) have the potential to cause significant impacts on water withdrawals or the temperature of discharged water; or (3) increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products.

B1.6 Tanks and Equipment To Control Runoff and Spills

Installation or modification of retention tanks or small (normally under one acre) basins and associated piping and pumps for existing operations to control runoff or spills (such as under 40 CFR part 112). Modifications include, but are not limited to, installing liners or covers. (See also B1.33 of this appendix.)

B1.7 Electronic Equipment

Acquisition, installation, operation, modification, and removal of electricity transmission control and monitoring devices for grid demand and response, communication systems, data processing equipment, and similar electronic equipment.

B1.8 Screened Water Intake and Outflow Structures

Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits.

B1.9 Airway Safety Markings and Painting

Placement of airway safety markings on, painting of, and repair and in-kind replacement of lighting on electrical transmission lines and antenna structures, wind turbines, and similar structures in accordance with applicable requirements (such as Federal Aviation Administration standards).

B1.10 Onsite Storage of Activated Material

Routine, onsite storage at an existing facility of activated equipment and material (including, but not limited to, lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

B1.11 Fencing

Installation of fencing, including, but not limited to border marking, that would not have the potential to cause significant impacts on wildlife populations or migration or surface water flow.

B1.12 Detonation or Burning of Explosives or Propellants After Testing

Outdoor detonation or burning of explosives or propellants that failed (duds), were damaged (such as by fracturing), or were otherwise not consumed in testing. Outdoor detonation or burning would be in areas designated and routinely used for those purposes under existing applicable permits issued by Federal, State, and local authorities (such as a permit for a RCRA miscellaneous unit (40 CFR part 264, subpart X)).

B1.13 Pathways, Short Access Roads, and Rail Lines

Construction, acquisition, and relocation, consistent with applicable right-of-way conditions and approved land use or transportation improvement plans, of pedestrian walkways and trails, bicycle paths, small outdoor fitness areas, and short access roads and rail lines (such as branch and spur lines).

B1.14 Refueling of Nuclear Reactors

Refueling of operating nuclear reactors, during which operations may be suspended and then resumed.

B1.15 Support Buildings

Siting, construction or modification, and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated and modular buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include, but are not limited to, those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (such as security posts); fire protection; small-scale fabrication (such as machine shop activities), assembly, and testing of non-nuclear equipment or components; and similar support purposes, but exclude facilities for nuclear weapons activities and waste storage activities, such as activities covered in B1.10, B1.29, B1.35, B2.6, B6.2, B6.4, B6.5, B6.6, and B6.10 of this appendix.

B1.16 Asbestos Removal

Removal of asbestos-containing materials from buildings in accordance with applicable requirements (such as 40 CFR part 61, "National Emission Standards for Hazardous Air Pollutants"; 40 CFR part 763, "Asbestos"; 29 CFR part 1910, subpart I, "Personal Protective Equipment"; and 29 CFR part 1926, "Safety and Health Regulations for Construction"; and appropriate State and local requirements, including certification of removal contractors and technicians).

B1.17 Polychlorinated Biphenyl Removal

Removal of polychlorinated biphenyl (PCB)-containing items (including, but not limited to, transformers and capacitors), PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with applicable requirements (such as 40 CFR part 761).

B1.18 Water Supply Wells

Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, provided that there would be no drawdown other than in the immediate vicinity of the pumping well, and the covered actions would not have the potential to cause significant long-term decline of the water table, and would not have the potential to cause significant degradation of the aquifer from the new or replacement well.

B1.19 Microwave, Meteorological, and Radio Towers

Siting, construction, modification, operation, abandonment, and removal of microwave, radio communication, and meteorological towers and associated facilities, provided that the towers and associated facilities would not be in a governmentally designated scenic area (see B(4)(iv) of this appendix) unless otherwise authorized by the appropriate governmental entity.

B1.20 Protection of Cultural Resources, Fish and Wildlife Habitat

Small-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries. Such activities would be conducted in accordance with an existing natural or cultural resource plan, if any.

B1.21 Noise Abatement

Noise abatement measures (including, but not limited to, construction of noise barriers and installation of noise control materials).

B1.22 Relocation of Buildings

Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area

(where active utilities and currently used roads are readily accessible).

B1.23 Demolition and Disposal of Buildings

Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces), provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.24 Property Transfers

Transfer, lease, disposition, or acquisition of interests in personal property (including, but not limited to, equipment and materials) or real property (including, but not limited to, permanent structures and land), provided that under reasonably foreseeable uses (1) there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment and (2) the covered actions would not have the potential to cause a significant change in impacts from before the transfer, lease, disposition, or acquisition of interests.

B1.25 Property Transfers for Cultural Resources Protection, Habitat Preservation, and Wildlife Management

Transfer, lease, disposition, or acquisition of interests in land and associated buildings for cultural resources protection, habitat preservation, or fish and wildlife management, provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.26 Small Water Treatment Facilities

Siting, construction, expansion, modification, replacement, operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Disconnection of Utilities

Activities that are required for the disconnection of utility services (including, but not limited to, water, steam, telecommunications, and electrical power) after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Placing a Facility in an Environmentally Safe Condition

Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste (such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste). These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Disposal Facilities for Construction and Demolition Waste

Siting, construction, expansion, modification, operation, and decommissioning of small (less than approximately 10 acres) solid waste disposal facilities for construction and demolition waste, in accordance with applicable requirements (such as 40 CFR part 257, "Criteria for Classification of Solid Waste Disposal Facilities and Practices," and 40 CFR part 61, "National Emission Standards for Hazardous Air Pollutants") that would not release substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.30 Transfer Actions

Transfer actions, in which the predominant activity is transportation, provided that (1) the receipt and storage capacity and management capability for the amount and type of materials, equipment, or waste to be moved already exists at the receiving site and (2) all necessary facilities and operations at the receiving site are already permitted, licensed, or approved, as appropriate. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 Installation or Relocation of Machinery and Equipment

Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts.

B1.32 Traffic Flow Adjustments

Traffic flow adjustments to existing roads (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes), and road adjustments (including, but not limited to, widening and realignment) that are within an existing right-of-way and consistent with approved land use or transportation improvement plans.

B1.33 Stormwater Runoff Control

Design, construction, and operation of control practices to reduce stormwater runoff and maintain natural hydrology. Activities include, but are not limited to, those that reduce impervious surfaces (such as vegetative practices and use of porous pavements), best management practices (such as silt fences, straw wattles, and fiber rolls), and use of green infrastructure or other low impact development practices (such as cisterns and green roofs).

B1.34 Lead-based Paint

Containment, removal, and disposal of lead-based paint in accordance with applicable requirements (such as provisions relating to the certification of removal contractors and technicians at 40 CFR part 745, "Lead-Based Paint Poisoning Prevention In Certain Residential Structures").

B1.35 Drop-off, Collection and Transfer Facilities for Recyclable Materials

Siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer stations on or contiguous to a previously disturbed or developed area and in an area where such a facility would be consistent with existing zoning requirements. The stations would have appropriate facilities and procedures established in accordance with applicable requirements for the handling of recyclable or compostable materials and household hazardous waste (such as paint and pesticides). Except as specified above, the collection of hazardous waste for disposal and the processing of recyclable or compostable materials are not included in this class of actions.

B1.36 Determinations of Excess Real Property

Determinations that real property is excess to the needs of DOE and, in the case of acquired real property, the subsequent reporting of such determinations to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of the Interior. Covered actions would not include disposal of real property.

B2. Categorical Exclusions Applicable to Safety and Health

B2.1 Workplace Enhancements

Modifications within or contiguous to an existing structure, in a previously disturbed or developed area, to enhance workplace habitability (including, but not limited to, installation or improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation, and noise reduction).

B2.2 Building and Equipment Instrumentation

Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, water consumption monitors and flow control systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

B2.3 Personnel Safety and Health Equipment

Installation of, or improvements to, equipment for personnel safety and health (including, but not limited to, eye washes,

safety showers, radiation monitoring devices, fumehoods, and associated collection and exhaust systems), provided that the covered actions would not have the potential to cause a significant increase in emissions.

B2.4 Equipment Qualification

Activities undertaken to (1) qualify equipment for use or improve systems reliability or (2) augment information on safety-related system components. These activities include, but are not limited to, transportation container qualification testing, crane and lift-gear certification or recertification testing, high efficiency particulate air filter testing and certification, stress tests (such as "burn-in" testing of electrical components and leak testing), and calibration of sensors or diagnostic equipment.

B2.5 Facility Safety and Environmental Improvements

Safety and environmental improvements of a facility (including, but not limited to, replacement and upgrade of facility components) that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements include, but are not limited to, replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR part 265, "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities" and 40 CFR part 280, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks"). These actions do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel).

B2.6 Recovery of Radioactive Sealed Sources

Recovery of radioactive sealed sources and sealed source-containing devices from domestic or foreign locations provided that (1) the recovered items are transported and stored in compliant containers, and (2) the receiving site has sufficient existing storage capacity and all required licenses, permits, and approvals.

B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

B3.1 Site Characterization and Environmental Monitoring

Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and abandonment of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would not have the potential to cause significant impacts from ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in salt water and freshwater. *See* B3.16 of this appendix for salt water and freshwater activities.) Specific activities include, but are not limited to:

(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;

(b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);

(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;

(d) Aquifer and underground reservoir response testing;

(e) Installation and operation of ambient air monitoring equipment;

(f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes);

(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);

(i) Sampling of flora or fauna; and

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

B3.2 Aviation Activities

Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

B3.3 Research Related to Conservation of Fish, Wildlife, and Cultural Resources

Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources or to the protection of cultural resources, provided that such activities would not have the potential to cause significant impacts on fish and wildlife habitat or populations or to cultural resources.

B3.4 Transport Packaging Tests for Radioactive or Hazardous Material

Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the applicable requirements (such as 49 CFR 173.411 and 173.412 and 10 CFR 71.73).

B3.5 Tank Car Tests

Tank car tests under 49 CFR part 179 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

B3.6 Small-Scale Research and Development, Laboratory Operations, and Pilot Projects

Siting, construction, modification, operation, and decommissioning of facilities for small-scale research and development projects; conventional laboratory operations (such as preparation of chemical standards and sample analysis); and small-scale pilot projects (generally less than 2 years) frequently conducted to verify a concept before demonstration actions, provided that construction or modification would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). For purposes of this category, "demonstration actions" means actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. Demonstration actions frequently follow research and development and pilot projects that are directed at establishing proof of concept.

B3.7 New Terrestrial Infill Exploratory and Experimental Wells

Siting, construction, and operation of new terrestrial infill exploratory and experimental (test) wells in a locally characterized geological formation in a field that contains existing operating wells, properly abandoned wells, or unminable coal seams containing natural gas, provided that the site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with applicable best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include those for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Uses for carbon sequestration wells include, but are not limited to, the study of saline formations, enhanced oil recovery, and enhanced coalbed methane extraction.

B3.8 Outdoor Terrestrial Ecological and Environmental Research

Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated analysis, provided that such activities would not have the potential to cause significant impacts on the ecosystem. These actions include, but are not limited to, small test plots for energy-related biomass or biofuels research. Such research may include the use of genetically engineered plants where the test plot of such plants and associated activities have been authorized by the U.S. Department of Agriculture, in accordance with applicable requirements (such as 7 CFR part 340),

including the use of any required confinement measures and buffer zones.

B3.9 Projects To Reduce Emissions and Waste Generation

Projects to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities, provided that these projects would not have the potential to cause a significant increase in the quantity or rate of air emissions. For this category of actions, "fuel" includes coal, oil, natural gas, hydrogen, syngas, and biomass. Neither "fuel" nor "alternative fuel" herein includes nuclear fuels. Covered actions include, but are not limited to:

(a) Test treatment of the throughput product (solid, liquid, or gas) generated at an existing and fully operational fuel combustion or utilization facility;

(b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing fuel combustion or utilization facility, for which the existing use remains essentially unchanged;

(c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of fuel burned or used and involves no permanent change in the capacity factor of the fuel combustion or utilization facility; and

(d) Addition or modification of equipment for capture and control of carbon dioxide or other regulated substances, provided that adequate infrastructure is in place to manage such substances.

B3.10 Particle Accelerators

Siting, construction, modification, operation, and decommissioning of particle accelerators, including electron beam accelerators, with primary beam energy less than approximately 100 million electron volts (MeV) and average beam power less than approximately 250 kilowatts (kW), and associated beamlines, storage rings, colliders, and detectors, for research and medical purposes (such as proton therapy), and isotope production, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible), or internal modification of any accelerator facility regardless of energy, that does not increase primary beam energy or current. In cases where the beam energy exceeds 100 MeV, the average beam power must be less than 250 kW, so as not to exceed an average current of 2.5 milliamperes (mA).

B3.11 Outdoor Tests and Experiments on Materials and Equipment Components

Outdoor tests and experiments for the development, quality assurance, or reliability of materials and equipment (including, but not limited to, weapon system components) under controlled conditions. Covered actions include, but are not limited to, burn tests (such as tests of electric cable fire resistance or the combustion characteristics of fuels), impact tests (such as pneumatic ejector tests using earthen embankments or concrete slabs designated and routinely used for that purpose), or drop, puncture, water-immersion, or thermal tests. Covered actions would not involve source, special nuclear, or byproduct materials, except that encapsulated sources that contain source, special nuclear, or byproduct materials may be used for nondestructive actions such as detector/sensor development and testing and first responder field training.

B3.12 Microbiological and Biomedical Facilities

Siting, construction, modification, operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4), in accordance with applicable requirements or best practices (such as Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, Feb. 2007, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and the National Institutes of Health) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment (such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation).

B3.13 Magnetic Fusion Experiments

Performing magnetic fusion experiments that do not use tritium as fuel, within existing facilities (including, but not limited to, necessary modifications).

B3.14 Small-Scale Educational Facilities

Siting, construction, modification, operation, and decommissioning of small-scale educational facilities (including, but not limited to, conventional teaching laboratories, libraries, classroom facilities, auditoriums, museums, visitor centers, exhibits, and associated offices) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include, but is not limited to, purchase, installation, and operation of equipment (such as audio/visual and laboratory equipment) commensurate with the educational purpose of the facility.

B3.15 Small-Scale Indoor Research and Development Projects Using Nanoscale Materials

Siting, construction, modification, operation, and decommissioning of facilities for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any biohazardous materials. Construction and modification activities would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

B3.16 Research Activities in Salt Water and Freshwater Environments

Small-scale, temporary surveying, site characterization, and research activities in salt water and freshwater environments, limited to:

(a) Acquisition of rights-of-way, easements, and temporary use permits;

(b) Data collection, environmental monitoring, and nondestructive research programs;

(c) Resource evaluation activities including surveying and mapping, but excluding seismic activities other than passive techniques;

(d) Collection of geological, paleontological, mineralogical, geochemical, biological, and geotechnical data and samples, but excluding large-scale vibratory coring techniques;

(e) Installation of monitoring and recording devices;

(f) Installation of equipment for flow testing of existing wells including equipment for fluid analysis; and

(g) Ecological and environmental research provided that such activities would not have the potential to cause significant impacts on the ecosystem.

These activities would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan and would incorporate appropriate control technologies and best management practices. None of the above activities would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity (such as protected areas and other areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally), or outside those areas if the activities would have the potential to cause significant impacts within those areas. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells.

B4. Categorical Exclusions Applicable to Power Resources

B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve only the use of the existing transmission system and existing generation resources operating within their normal operating limits.

B4.2 Export of Electric Energy

Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using

transmission system changes that are themselves categorically excluded.

B4.3 Electric Power Marketing Rate Changes

Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

B4.4 Power Marketing Services and Activities

Power marketing services and power management activities (including, but not limited to, storage, load shaping, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits.

B4.5 Temporary Adjustments to River Operations

Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events, provided that the adjustments would occur within the existing operating constraints of the particular hydrosystem operation.

B4.6 Additions and Modifications to Transmission Facilities

Additions or modifications to electric power transmission facilities that would not have the potential to cause significant impacts beyond the previously disturbed or developed facility area (including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as the installation and use of flywheels and battery arrays), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms).

B4.7 Fiber Optic Cable

Adding fiber optic cables to transmission facilities or burying fiber optic cable in existing transmission line or pipeline rights-of-way. Covered actions may include associated vaults and pulling and tensioning sites outside of rights-of-way in nearby previously disturbed or developed areas.

B4.8 Electricity Transmission Agreements

New electricity transmission agreements, and modifications to existing transmission arrangements, to use a transmission facility of one system to transfer power of and for another system, provided that no new generation projects would be involved and no physical changes in the transmission system would be made beyond the previously disturbed or developed facility area.

B4.9 Multiple Use of Transmission Line Rights-of-Way

Granting or denying requests for multiple uses of a transmission facility's rights-of-way (including, but not limited to, grazing permits and crossing agreements for electric lines, water lines, natural gas pipelines, communications cables, roads, and drainage culverts).

B4.10 Removal of Electric Transmission Lines and Substations

Deactivation, dismantling, and removal of electric transmission facilities (including, but not limited to, electric transmission lines, substations, and switching stations) and abandonment and restoration of rights-of-way (including, but not limited to, associated access roads).

B4.11 Electric Power Substations and Interconnection Facilities

Construction or modification of electric power substations or interconnection facilities (including, but not limited to, switching stations and support facilities) that are not for the interconnection of a new generation resource into a Power Marketing Administration's transmission system, unless: (1) The new generation resource would be eligible for categorical exclusion under this part and (2) the new generation resource would be equal to or less than 50 average megawatts.

B4.12 Construction of Transmission Lines

Construction of electric transmission lines approximately 10 miles in length or less inside or outside of previously disturbed or developed transmission line or pipeline rights-of-way, or approximately 20 miles in length or less inside of previously disturbed or developed transmission line or pipeline rights-of-way, that are not for the interconnection of a new generation resource into a Power Marketing Administration's transmission system, unless: (1) The new generation resource would be eligible for categorical exclusion under this part and (2) the new generation resource would be equal to or less than 50 average megawatts.

B4.13 Upgrading and Rebuilding Existing Transmission Lines

Upgrading or rebuilding approximately 20 miles in length or less of existing electric transmission lines, which may involve minor relocations of small segments of the transmission lines, that is not for the interconnection of a new generation resource into a Power Marketing Administration's transmission system, unless: (1) The new generation resource would be eligible for categorical exclusion under this part and (2) the new generation resource would be equal to or less than 50 average megawatts.

B5. Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities

B5.1 Actions To Conserve Energy or Water

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as State, local, and Tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not: (1) Have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance); (2) involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials); (3) have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or (4) have the potential to cause a significant increase in energy consumption in a State or region.

B5.2 Modifications to Pumps and Piping

Modifications to existing pump and piping configurations (including, but not limited to, manifolds, metering systems, and other instrumentation on such configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water). Covered modifications would not have the potential to cause significant changes to design process flow rates or permitted air emissions.

B5.3 Modification or Abandonment of Wells

Modification (but not expansion) or plugging and abandonment of wells, provided that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with best practices and DOE

protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include, but are not limited to, storage and injection wells for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Covered modifications would not be part of site closure.

B5.4 Repair or Replacement of Pipelines

Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.

B5.5 Short Pipeline Segments

Construction and subsequent operation of short (generally less than 20 miles in length) pipeline segments conveying materials (such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water) between existing source facilities and existing receiving facilities (such as facilities for use, reuse, transportation, storage, and refining), provided that the pipeline segments are within previously disturbed or developed rights-of-way.

B5.6 Oil Spill Cleanup

Removal of oil and contaminated materials recovered in oil spill cleanup operations and disposal of these materials in accordance with applicable requirements (such as the National Oil and Hazardous Substances Pollution Contingency Plan).

B5.7 Import or Export Natural Gas, With Operational Changes

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.

B5.8 Import or Export Natural Gas, With New Cogeneration Powerplant

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve new cogeneration powerplants (as defined in the Powerplant and Industrial Fuel Use Act of 1978, as amended) within or contiguous to an existing industrial complex and requiring generally less than 10 miles of new natural gas pipeline or 20 miles within previously disturbed or developed rights-of-way.

B5.9 Temporary Exemptions For Electric Powerplants

Grants or denials of temporary exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, for electric powerplants.

B5.10 Certain Permanent Exemptions For Existing Electric Powerplants

For existing electric powerplants, grants or denials of permanent exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, other than exemptions under section 312(c) relating to cogeneration and section 312(b) relating to certain State or local requirements.

B5.11 Permanent Exemptions Allowing Mixed Natural Gas and Petroleum

For new electric powerplants, grants or denials of permanent exemptions from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover of Existing Wells

Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of existing wells (including, but not limited to, activities associated with brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil) to restore functionality, provided that workover operations are restricted to the existing wellpad and do not involve any new site preparation or earthwork that would have the potential to cause significant impacts on nearby habitat; that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers; and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials.

B5.13 Experimental Wells for Injection of Small Quantities of Carbon Dioxide

Siting, construction, operation, plugging, and abandonment of experimental wells for the injection of small quantities of carbon dioxide (and other incidentally co-captured gases) in locally characterized, geologically secure storage formations at or near existing carbon dioxide sources to determine the suitability of the formations for large-scale sequestration, provided that (1) the characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers; (2) the wells are otherwise in accordance with applicable requirements, best practices, and DOE protocols, including those that protect against uncontrolled releases of harmful materials; and (3) the wells and associated drilling activities are sufficiently remote so that they would not have the potential to cause significant impacts related to noise and other vibrations. Wells may be used for enhanced oil or natural gas recovery or for secure storage of carbon dioxide in saline formations or other secure formations. Over the duration of a project, the wells would be used to inject, in aggregate, less than 500,000 tons of carbon dioxide into the geologic formation. Covered actions exclude activities in salt water and freshwater environments. (See B3.16 of this appendix for activities in salt water and freshwater environments.)

B5.14 Combined Heat and Power or Cogeneration Systems

Conversion to, replacement of, or modification of combined heat and power or cogeneration systems (the sequential or simultaneous production of multiple forms of energy, such as thermal and electrical energy, in a single integrated system) at existing facilities, provided that the conversion, replacement, or modification would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.

B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects

Small-scale renewable energy research and development projects and small-scale pilot projects located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.16 Solar Photovoltaic Systems

The installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other structure (such as rooftop, parking lot or facility, and mounted to signage, lighting, gates, or fences), or if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.17 Solar Thermal Systems

The installation, modification, operation, and removal of commercially available small-scale solar thermal systems (including, but not limited to, solar hot water systems) located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.18 Wind Turbines

The installation, modification, operation, and removal of commercially available small wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that (1) are located within a previously disturbed or developed area; (2) are located more than 10 nautical miles from an airport or aviation navigation aid; (3) are located more than 1.5 nautical miles from National Weather Service or Federal Aviation Administration Doppler weather radar; (4) would not have the potential to cause significant impacts on bird or bat species; and (5) are sited or designed such that the project would not have the potential to cause significant impacts to

persons (such as shadow flicker and other visual impacts, and noise). Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.19 Ground Source Heat Pumps

The installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school and community center) or contiguous facilities (such as an office complex) (1) only where major associated activities (such as drilling and discharge) are regulated, and appropriate leakage and contaminant control measures would be in place; (2) that would not have the potential to cause significant changes in subsurface temperature; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.20 Biomass Power Plants

The installation, modification, operation, and removal of small-scale biomass power plants (generally less than 10 megawatts), using commercially available technology (1) intended primarily to support operations in single facilities (such as a school and community center) or contiguous facilities (such as an office complex); (2) that would not affect the air quality attainment status of the area and would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.21 Methane Gas Recovery and Utilization Systems

The installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant that would not have the potential to cause a significant increase in the quantity or rate of air emissions. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.22 Alternative Fuel Vehicle Fueling Stations

The installation, modification, operation, and removal of alternative fuel vehicle fueling stations (such as for compressed natural gas, hydrogen, ethanol and other commercially available biofuels) on the site of a current or former fueling station, or within a previously disturbed or developed area within the boundaries of a facility managed by the owners of a vehicle fleet. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.23 Electric Vehicle Charging Stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.24 Drop-In Hydroelectric Systems

The installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems that would (1) involve no water storage or water diversion from the stream or river channel where the system is installed and (2) not have the potential to cause significant impacts on water quality, temperature, flow, or volume. Covered systems would be located up-gradient of a natural anadromous fish barrier and where there would not be the potential for significant impacts to threatened or endangered species. Covered actions would involve no major construction or modification of stream or river channels, and the hydroelectric systems would be placed and secured in the channel without the use of heavy equipment. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Salt Water and Freshwater Environments

Small-scale renewable energy research and development projects and small-scale pilot projects located in salt water and freshwater environments. Activities would be in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Covered actions would not occur (1) within areas of hazardous natural bottom conditions or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity (such as protected areas and other areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally), or outside those areas if the activities would have the potential to cause significant impacts within those areas. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells, use of large-scale vibratory coring techniques, or seismic activities other than passive techniques.

B6. Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities

B6.1 Cleanup Actions

Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 10 million dollars in cost, to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (such as drums and barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable State requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in accordance with applicable requirements (such as RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G) if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

(e) Capping or other containment of contaminated soils or sludges if the capping or containment would not unduly limit future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products into soil, groundwater, surface water, or air;

(f) Drainage or closing of man-made surface impoundments if needed to maintain the integrity of the structures;

(g) Confinement or perimeter protection using dikes, trenches, ditches, or diversions,

or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;

(h) Stabilization, but not expansion, of berms, dikes, impoundments, or caps if needed to maintain integrity of the structures;

(i) Drainage controls (such as run-off or run-on diversion) if needed to reduce offsite migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum or natural gas products or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(j) Segregation of wastes that may react with one another or form a mixture that could result in adverse environmental impacts;

(k) Use of chemicals and other materials to neutralize the pH of wastes;

(l) Use of chemicals and other materials to retard the spread of the release or to mitigate its effects if the use of such chemicals would reduce the spread of, or direct contact with, the contamination;

(m) Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants if appropriate filtration or gas treatment is in place;

(n) Installation of fences, warning signs, or other security or site control precautions if humans or animals have access to the release; and

(o) Provision of an alternative water supply that would not create new water sources if necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

B6.2 Waste Collection, Treatment, Stabilization, and Containment Facilities

The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities, and pilot-scale (generally less than 1 acre) waste stabilization and containment facilities (including siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis), provided that the action (1) supports remedial investigations/feasibility studies under CERCLA, or similar studies under RCRA (such as RCRA facility investigations/corrective measure studies) or other authorities and (2) would not unduly limit the choice of reasonable remedial alternatives (such as by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives).

B6.3 Improvements to Environmental Control Systems

Improvements to environmental monitoring and control systems of an existing building or structure (such as changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems), provided that during subsequent operations (1) any substance collected by the environmental control systems would be recycled, released, or disposed of within existing permitted facilities and (2) there are applicable statutory or regulatory requirements or permit conditions for disposal, release, or recycling of any hazardous substance or CERCLA-excluded petroleum or natural gas products that are collected or released in increased quantity or that were not previously collected or released.

B6.4 Facilities for Storing Packaged Hazardous Waste for 90 Days or Less

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for storing packaged hazardous waste (as designated in 40 CFR part 261) for 90 days or less or for longer periods as provided in 40 CFR 262.34(d), (e), or (f) (such as accumulation or satellite areas).

B6.5 Facilities for Characterizing and Sorting Packaged Waste and Overpacking Waste

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, provided that operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10 of this appendix, and C16 of appendix C) or the handling of spent nuclear fuel.

B6.6 Modification of Facilities for Storing, Packaging, and Repacking Waste

Modification (excluding increases in capacity) of an existing structure used for storing, packaging, or repacking waste other than high-level radioactive waste or spent nuclear fuel, to handle the same class of waste as currently handled at that structure.

B6.7 [Reserved]

B6.8 Modifications for Waste Minimization and Reuse of Materials

Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include, but are not limited to, adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

B6.9 Measures To Reduce Migration of Contaminated Groundwater

Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Upgraded or Replacement Waste Storage Facilities

Siting, construction, modification, expansion, operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. (*See also* B6.4, B6.5, B6.6 of this appendix, and C16 of appendix C.)

B7. Categorical Exclusions Applicable to International Activities

B7.1 Emergency Measures Under the International Energy Program

Planning and implementation of emergency measures pursuant to the International Energy Program.

B7.2 Import and Export of Special Nuclear or Isotopic Materials

Approval of import or export of small quantities of special nuclear materials or isotopic materials in accordance with applicable requirements (such as the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (43 FR 25326, June 9, 1978)).

Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

C1 [Reserved]

C2 [Reserved]

C3 Electric Power Marketing Rate Changes, Not Within Normal Operating Limits

Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements if the operations of generation projects would not remain within normal operating limits.

C4 Upgrading, Rebuilding, or Construction of Electric Transmission Lines

Upgrading or rebuilding more than approximately 20 miles in length of existing electric transmission lines; or construction of electric transmission lines (1) more than approximately 10 miles in length outside previously disturbed or developed transmission line or pipeline rights-of-way or (2) more than approximately 20 miles in length within previously disturbed or developed transmission line or pipeline rights-of-way.

C5 Vegetation Management Program

Implementation of a Power Marketing Administration system-wide vegetation management program.

C6 Erosion Control Program

Implementation of a Power Marketing Administration system-wide erosion control program.

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts and that would not be eligible for categorical exclusion under this part; (2) changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or (3) service to discrete new loads of less than10 average megawatts over a 12-month period.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

Large-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries.

C9 Wetlands Demonstration Projects

Field demonstration projects for wetlands mitigation, creation, and restoration.

C10 [Reserved]

C11 Particle Acceleration Facilities

Siting, construction or modification, operation, and decommissioning of low- or medium-energy (when the primary beam energy exceeds approximately 100 million electron volts and the average beam power exceeds approximately 250 kilowatts or where the average current exceeds 2.5 milliamperes) particle acceleration facilities, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

C12 Energy System Demonstration Actions

Siting, construction, and operation of energy system demonstration actions (including, but not limited to, wind resource, hydropower, geothermal, fossil fuel, biomass, and solar energy, but excluding nuclear). For purposes of this category, "demonstration actions" means actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. Demonstration actions frequently follow research and development and pilot projects that are directed at establishing proof of concept.

C13 Import or Export Natural Gas Involving Minor New Construction

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving minor new construction (such as adding new connections, looping, or compression to an existing natural gas or liquefied natural gas pipeline, or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way).

C14 Water Treatment Facilities

Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

C15 Research and Development Incinerators and Nonhazardous Waste Incinerators

Siting, construction (or expansion), and operation of research and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

C16 Large Waste Packaging and Storage Facilities

Siting, construction, modification to increase capacity, operation, and decommissioning of packaging and unpacking facilities (such as characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. (See also B6.4, B6.5, B6.6, and B6.10 of appendix B.)

Appendix D to Subpart D of Part 1021—Classes of Actions That Normally Require EISs

D1 Strategic Systems

Strategic Systems, as defined in DOE Order 430.1, "Life-Cycle Asset Management," or its successor, and designated by the Secretary.

D2 Nuclear Fuel Reprocessing Facilities

Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

D3 Uranium Enrichment Facilities

Siting, construction, operation, and decommissioning of uranium enrichment facilities.

D4 Reactors

Siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors.

D5 [Reserved]

D6 [Reserved]

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts; (2) changes in the normal operating limits of generation resources greater than 50 average megawatts; or (3) service to discrete new loads of 10 average megawatts or more over a 12-month period.

D8 Import or Export of Natural Gas Involving Major New Facilities

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving construction of major new natural gas pipelines or related facilities (such as liquefied natural gas terminals and regasification or storage facilities) or significant expansions and modifications of existing pipelines or related facilities).

D9 Import or Export of Natural Gas Involving Major Operational Change

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving major operational changes (such as a major increase in the quantity of liquefied natural gas imported or exported).

D10 Treatment, Storage, and Disposal Facilities for High-Level Waste and Spent Nuclear Fuel

Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites where such replacement or upgrade would not result in increased storage capacity.

D11 Waste Disposal Facilities for Transuranic Waste

Siting, construction or expansion, and operation of disposal facilities for transuranic (TRU) waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

D12 Incinerators

Siting, construction, and operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

[FR Doc. 2010–32316 Filed 12–30–10; 8:45 am]

BILLING CODE 6450–01–P

Proposed Rules

Federal Register

Vol. 76, No. 1

Monday, January 3, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0908; Directorate Identifier 2009–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for the products listed above. That NPRM proposed replacing the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupt (GFI) feature. That NPRM was prompted by results from fuel system reviews conducted by the manufacturer. This action revises that NPRM for all airplanes by proposing to require an electrical bonding resistance measurement for certain GFI relays to verify that certain bonding requirements are met. This action also revises that NPRM by proposing to require, for certain airplanes, an inspection to ensure that certain screws are properly installed, and re-installing longer screws if necessary. We are proposing this supplemental NPRM to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by January 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 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.* 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590; e-mail: *Georgios.Roussos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0908; Directorate Identifier 2009–NM–067–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 757–200, –200PF, –200CB, and –300 series airplanes. That NPRM was published in the **Federal Register** on October 19, 2009 (74 FR 53436). That NPRM proposed to require replacing the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupt (GFI) feature.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM, Boeing has issued Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010. In the previous NPRM, we referred to Boeing Alert Service Bulletins 757–28A0078 and 757–28A0079, both dated July 16, 2008, as the appropriate sources of service information. The procedures in Revision 1 of these service bulletins are essentially the same as those in the original issues; however, Revision 1 of these service bulletins also includes the following new actions:

- *For all airplanes:* Adds bonding resistance measurements of the GFI relays installed on the P33 and P37 panels to verify that certain bonding requirements are met.
- *For airplanes on which the original issue of these service bulletins has been*

done: Adds general visual inspection to ensure that the installation screws used to secure the GFI relays have enough grip length to hold the screws to each nutplate. The original screws were shorter and might not have been installed properly. Revision 1 of these service bulletins specifies installation of longer screws if necessary.

• *For all airplanes:* Corrects the part number for the screws used to install the relays and adds substitution information for installation screws.

Comments

We gave the public the opportunity to comment on the previous NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change Wording in NPRM

Boeing requested that we change the wording in the paragraph of the NPRM titled, "FAA's Determination and Requirements of This Proposed AD." The paragraph states in part: "Airworthiness Limitation (AWL) 28–AWL–21 of Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, Revision March 2008, which was required by AD 2008–10–11, is also related to this proposed AD by including a repetitive operational test of the GFI relays, and repair of any failed GFI relay to ensure continued functionality of the GFI circuit." Boeing pointed out that AWL 28–AWL–21 does not mention repair of any failed GFI relay and requested that the phrase "and repair of any failed GFI relay" be deleted from that paragraph of the NPRM.

We agree with Boeing's statement that AWL 28–AWL–21 of Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, Revision March 2008, does not describe repair of the GFI relays. The intent of the repair statement in the original NPRM was to show that if a maintenance check fails, it should be followed by a system repair and retest before pump operation. The correction can be a replacement of the GFI relay, its repair, or some other means identified in the airplane maintenance manual. However, the paragraph referenced by the commenter is not restated in this supplemental NPRM. Therefore, no change to this supplemental NPRM is necessary in this regard.

Request To Permit Incorporation of Universal Fault Interrupter (UFI)

TDG Aerospace requested that we change the previous NPRM to reflect incorporation of a UFI it produces as an approved means of compliance for providing electrical fault protection for the center fuel tank override boost pumps. Thomson Airways, Jet2.com, FedEx, Continental Airlines, American Airlines, and DHL support TDG Aerospace's request. TDG Aerospace stated that FAA Supplemental Type Certificate (STC) ST01950LA, issued January 17, 2007, installs the TDG Aerospace UFI on Model 757 airplanes. TDG Aerospace pointed out that the UFIs have been approved as an alternative method of compliance (AMOC) with the requirements of paragraph (g) of AD 2008–11–07, Amendment 39–15529 (73 FR 30755, May 29, 2008), and paragraph (e) of AD 2002–24–51, Amendment 39–12900 (67 FR 61253, September 30, 2002), for certain Model 757–200 and 757–300 airplanes.

We acknowledge the commenter's request to allow the incorporation of the TDG Aerospace UFI for compliance with this supplemental NPRM. We will be working closely with TDG Aerospace on this issue; however, we have not yet completed evaluating the STC (STC ST01950LA) against the GFI-specific requirements of this supplemental NPRM. We issued AMOC approvals for certain requirements of ADs 2008–11–07 and 2002–24–51 in reference to potential ignition due to the generation of sparks caused by metal-to-metal contact during dry fuel pump operation, rather than generation by electrical arcing that this supplemental NPRM addresses. If substantiating data demonstrate that the TDG Aerospace UFI will provide an acceptable level of safety, we might consider reflecting incorporation of the STC as an option when we issue the final rule AD. We have not changed the supplemental NPRM in this regard.

Request Use of Substitutes for Common Hardware

American Airlines requested that operators be allowed to use substitutes for common hardware such as washers, nuts, bolts, shims, sealants, and adhesives that have been determined to be equivalent to the operator's parts management system. American Airlines stated that the Parts Disposition Authority for American Airlines is contained in the engineering procedures manual (EPM), which is incorporated by reference into the general manual that is required by the FAA-approved operations specification. The commenter stated that the EPM defines the process by which parts equivalency can be established. American Airlines stated that using approved substitutes for common hardware will eliminate unnecessary AMOC requests for equivalent hardware.

We disagree with the request to allow the use of substitutes for common hardware. Common hardware, as detailed above, in certain cases may play an integral role in the safety and integrity of the installation. The specific importance of common hardware may not always be obvious, and parts equivalency can only be assessed and addressed by an engineering review of the system and its installation. Operators may use the approved fastener and process material substitutions listed in the Accomplishment Instructions of Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010, as applicable. According to the provisions of paragraph (k) of this AD, operators may request approval of an AMOC to use substitutes for common hardware, if the request is submitted with substantiating data that demonstrate the substitutes for common hardware will provide an acceptable level of safety. We have not changed the supplemental NPRM in this regard.

Explanation of Changes Made to This Supplemental NPRM

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

Since issuance of the original 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 rate.

We have also revised the Costs of Compliance in this supplemental NPRM to include the cost of the inspection to ensure that the installation screws used to secure the GFI relays have enough grip length to hold the screws to each nutplate and the cost of the bonding resistance measurement.

We have been advised that there is an error in Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010. The note in paragraph 3.B.12.i(5), refers to the left override fuel boost pump instead of the right override fuel boost pump. Boeing has issued Service Bulletin Information Notices (IN) 757–28A0078 IN 02 and 757–28A0079 IN 02, both dated October 6, 2010, to inform operators of the error. We have added a new paragraph (i) to this supplemental NPRM to reflect this change.

FAA's Determination

We are proposing this supplemental NPRM 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. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD will affect 696 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement, measurement, and operational test.	7 work-hours × $85 per hour = $595	$12,600	$13,195	Up to $9,183,720.[1]
Inspection of screw installation and bonding resistance measurement.	1 work-hour × $85 per hour = $85	0	85	$59,160.

[1] The cost on U.S. operators depends on airplane configuration.

We estimate the following costs to do the inspection to ensure that certain installation screws have sufficient grip length for airplanes on which the original issue of the service bulletins has been incorporated. We have no way of determining the number of airplanes that might need this inspection:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of longer screw	1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2009–0908; Directorate Identifier 2009–NM–067–AD.

Comments Due Date

(a) We must receive comments by January 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category; as identified in the applicable service bulletin specified in paragraph (c)(1) or (c)(2) of this AD.

(1) For Model 757–200, –200PF, and –200CB series airplanes: Boeing Service Bulletin 757–28A0078, Revision 1, dated August 24, 2010.

(2) For Model 757–300 series airplanes: Boeing Service Bulletin 757–28A0079, 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 prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Replacement, Measurements and Test

(g) For airplanes on which the actions specified in Boeing Alert Service Bulletin 757–28A0078 or 757–28A0079, both dated July 16, 2008, have not been accomplished as of the effective date of this AD: Within 60 months after the effective date of this AD, replace the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupt (GFI) feature; do applicable electrical bonding resistance measurements between the GFI relays and their installation panel to verify that applicable bonding requirements are met; and do an operational test to ensure correct operation, as specified in Boeing Service Bulletin 757–28A0078, Revision 1, dated August 24, 2010 (for Model 757–200, –200CB, and –200PF airplanes); or Boeing Service Bulletin 757–28A0079, Revision 1, dated August 24, 2010 (for Model 757–300 airplanes). Do all actions in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 757–28A0078, Revision 1, dated August 24, 2010 (for Model 757–200, –200CB, and –200PF airplanes); or Boeing Service Bulletin 757–28A0079, Revision 1, dated August 24, 2010 (for Model 757–300 airplanes); except as required by paragraph (i) of this AD.

Inspection

(h) For airplanes on which the actions specified in Boeing Alert Service Bulletin 757–28A0078 or 757–28A0079, both dated July 16, 2008, have been accomplished before the effective date of this AD: Within 60 months after the effective date of this AD, do a general visual inspection to verify that each GFI installation screw has enough grip length to hold the screws in each nut plate; and do applicable electrical bonding resistance measurements between the GFI relays and their installation panel to verify that applicable bonding requirements are met. If the screw does not have enough grip length, before further flight, install a longer screw. Do all actions in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 757–28A0078, Revision 1, dated August 24, 2010 (for Model 757–200, –200CB, and –200PF airplanes); or Boeing Service Bulletin 757–28A0079, Revision 1, dated August 24, 2010 (for Model 757–300 airplanes).

Exception to the Service Information

(i) The note in paragraph 3.B.12.i(5) of Part 1 of the Accomplishment Instructions of Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010, should read, "NOTE: The right override fuel boost pump PRESS light stays off when the pump switch is turned to OFF."

Paperwork Reduction Act Burden Statement

(j) 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.

Alternative Methods of Compliance (AMOCs)

(k)(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. 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. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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

(l) For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle ACO, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*; e-mail: *Georgios.Roussos@faa.gov.*

(m) 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.* 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.

Issued in Renton, Washington, on December 23, 2010.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33129 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1272; Directorate Identifier 2010–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require replacing the existing unshielded fuel quantity indication system (FQIS) wire bundles with double shielded FQIS wire bundles, installing a new wire feed-through fitting, and grounding the wire shields, as applicable; and doing repetitive low frequency eddy current (LFEC) inspections for cracking of the fuselage skin, and corrective actions if necessary. This proposed AD also would require revising the maintenance program to incorporate certain airworthiness limitations. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. We are proposing this AD to increase the level of protection from lightning strikes and 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: We must receive comments on this proposed AD by February 17, 2011.

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

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

p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed 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.* 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590; e-mail: *elias.natsiopoulos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1272; Directorate Identifier 2010–NM–226–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

A safety assessment has determined that shielding was not provided for the FQIS wire bundles. Unshielded wire bundles could result in a reduced level of protection against a lightning strike which could be a potential ignition source for the fumes in the fuel tanks. This condition, if not corrected, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We reviewed Boeing Service Bulletin 727–28–0131, dated August 18, 2010. The service information describes procedures for the following:

- For airplanes in Groups 1, 12, 13, and 14: Replacing the FQIS wire bundles between the fitting and ground brackets at the pressure seal and the tank connectors on the wing tanks with double shielded wire bundles; installing a new wire feed-through fitting and ground brackets for the wires at the pressure seal, and ground brackets at the wing tank connectors; and grounding the wire shields at the pressure seal feed-through fitting and ground brackets and at the tank connector brackets.
- For airplanes in Groups 2 through 11 and 15 through 49: Replacing the FQIS wire bundles between the pressure seal and the volumetric top-off (VTO) connectors with double shielded wire bundles and working the ground wires at the VTO connectors.
- For all airplanes: Doing repetitive LFEC inspections for cracking in the fuselage skin on the left and right sides of the airplane, and contacting Boeing for repair instructions and doing the repair if necessary.

We have also reviewed Section 9 of the Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. Sub-Section D of Section 9 of the Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL describes AWLs for fuel tank systems, including the following fuel system AWLs:

- AWL No. 28–AWL–18 which is a check of the fuel quantity indicating system (FQIS)—out-tank wiring lightning shield to ground termination, applicable to all Model 727–100 and –200 airplanes that have incorporated Boeing Service Bulletin 727–28–0131.
- AWL No. 28–AWL–19 which is a critical design configuration control limitation (CDCCL) that specifies to do a check of the FQIS—out-tank wiring lightning shield to ground termination, following any FQIS out-tank wire bundle replacement, wire bundle shield repair or shield path to ground reconnection, applicable to all Model 727–100 and –200 airplanes that have incorporated Boeing Service Bulletin 727–28–0131.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between Proposed Rule and Service Bulletin."

Differences Between Proposed Rule and Service Bulletin

Although Boeing Service Bulletin 727–28–0131, dated August 18, 2010, specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those cracks using a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD will affect 566 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	Between 86 and 247 work-hours × $85 per hour = Between $7,310–$20,995.[1]	Between $16,191 and $34,712.[1]	Between $23,501 and $55,707.[1]	Up to $27,195,925.[2]
Inspection	2 work-hours × $85 per hour = $170 per inspection cycle.	0	170	96,220 per inspection cycle.
Maintenance Program Revision.	1 work-hour × $85 per hour = $85	0	85	48,110.

[1] Depending on configuration.
[2] The cost on U.S. operators is based on configuration and number of airplanes in that configuration.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition action specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–1272; Directorate Identifier 2010–NM–226–AD.

Comments Due Date

(a) We must receive comments by February 17, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, all variable numbers, certificated in any category.

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

Subject

(d) 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 increase the level of protection from lightning strikes and 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) Comply with this AD within the compliance times specified, unless already done.

Installation

(g) Within 60 months after the effective date of this AD, install double shielded fuel quantity indicating system (FQIS) wire bundles, install a new wire feed-through fitting, and ground the wire shields, as applicable, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 727–28–0131, dated August 18, 2010.

Repetitive Inspections

(h) At the applicable times specified in paragraphs (h)(1) or (h)(2) of this AD, do low frequency eddy current (LFEC) inspections for cracking of the fuselage skin, in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 727–28–0131, dated August 18, 2010.

(1) For Model 727, 727–100, 727–100C, and 727C series airplanes: Before the accumulation of 45,000 total flight cycles, or within 8,000 flight cycles after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles.

(2) For Model 727–200 and 727–200F series airplanes: Before the accumulation of 45,000 total flight cycles, or within 16,000 flight cycles after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 16,000 flight cycles.

(i) If any cracking is found during any inspection required by paragraph (h) of this AD: Before further flight, repair the crack in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. 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.

Maintenance Program Revision

(j) Before or concurrently with doing the actions required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the maintenance program by incorporating airworthiness limitations (AWL) No. 28–AWL–18 and 28–AWL–19 in Section D of Section 9 ("AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS") of the Boeing 727–100/200 Airworthiness Limitations (AWLs) Document, D6–8766–AWL, Revision August 2010. The initial compliance time for AWL No. 28–AWL–18 is within 10 years after the accomplishment of paragraph (g) of this AD, or within 10 years after the effective date of this AD, whichever occurs later.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(k) After accomplishing the action 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 (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(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. 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. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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

(m) For more information about this AD, contact Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590; e-mail: *elias.natsiopoulos@faa.gov.*

(n) 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.* 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.

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33002 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1275; Directorate Identifier 2010–NM–091–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DGAC [Direction Générale de l'Aviation Civile] France Airworthiness Directive (AD) 1992–106–132(B) * * * was issued to require a set of inspection- and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure. * * *.

* * * * *

The unsafe condition is reduced structural integrity of the wings. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 17, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The

street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1275; Directorate Identifier 2010–NM–091–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On December 8, 1998, we issued AD 98–26–01, Amendment 39–10942 (63 FR 69179, December 16, 1998). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 98–26–01, we have determined that certain compliance times need to be reduced in order to adequately address the identified unsafe condition. Therefore, certain requirements of paragraphs (h), (i), (j), (m), (n), and (s) of that AD are included in this NPRM. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0242, dated September 4, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> DGAC [Direction Générale de l'Aviation Civile] France Airworthiness Directive (AD) 1992–106–132(B) original issue up to revision 7 was issued to require a set of inspection- and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure [FAA AD 98–26–01 corresponds to DGAC AD 1992–106–132(B)R4, dated June 5, 1996].
>
> Following the Extended Design Service Goal activities as part of the Structure Task Group for the Airbus A310 program, EASA issued AD 2007–0053 which replaced DGAC France AD F–1992–106–132R7. Since the issuance of that AD, the thresholds and the intervals of some Airbus Service Bulletins (SBs which address structure fatigue related areas on the wing parts), until now part of the requirements of AD 2007–0053, have been updated.
>
> For the reasons stated above, this new [EASA] AD requires the accomplishment of the structural fatigue-related corrective actions in accordance with the latest revision of these SBs which have been reviewed in the context of the A310 Extended Service Goal activities. Consequently, this new AD supersedes the requirements of paragraphs 1.8, 1.9, 1.10, 1.13, 1.18 of EASA AD 2007–0053, which has been revised accordingly.

The unsafe condition is reduced structural integrity of the wings. The required actions are as follows, depending on airplane configuration:

- For certain Model A310–203 and A310–222 airplanes: Repetitive detailed inspections for cracking of the leading edge access panels around the bolt holes, and repair if necessary.
- For certain Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes: Repetitive eddy current inspections to detect cracks in the holes around the overwing refueling aperture at ribs 13–14, and repair if necessary.
- For certain Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes: Repetitive external detailed inspections for cracking of the top skin at ribs 13–14, repetitive internal detailed inspections for cracking of stringer 7 and stringer 8 of the overwing refuel aperture, and repair if necessary.
- For certain Model A310–203 and A310–222 airplanes: Repetitive detailed inspections for cracking around the bolts in the wing top skin upper surface of the front spar between rib 7 and rib 28, and repair if necessary.
- For certain Model A310–203 and A310–222 airplanes: Repetitive high frequency eddy current (HFEC) or X-ray inspections to detect cracking of the stringer runouts inboard and outboard of rib 14 at stringers 6, 7, 8, and 9, and repair if necessary.
- For certain Model A310–203, A310–204, A310–222, A310–304, A310A–322, and A310–324 airplanes: Repetitive ultrasonic inspections for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, and repair if necessary.

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

Other Relevant Rulemaking

On September 5, 1990, we issued AD 90–19–07, Amendment 39–6731 (55 FR 37455), for certain Airbus Model A310–200 series airplanes, to require repetitive X-ray inspections of stringers 6, 7, 8, and 9 run-outs inboard and outboard of rib 14, and repair if necessary. Accomplishing an inspection in accordance with paragraph (l) of this AD would terminate the requirements of paragraph (a) of AD 90–19–07.

On March 6, 1991, we issued AD 91–06–18, amendment 39–6940 (56 FR 10796), for all Airbus Model A310–200 series airplanes, to require repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, and repair, if necessary. Accomplishing an inspection in accordance with paragraph (q) of this AD would terminate the requirements of AD 91–06–18, amendment 39–6940.

We are also considering issuing three other NPRMs related to this NPRM:

- *Directorate Identifier 2010–NM–092–AD.* That NPRM proposes to supersede AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998), to continue to require certain actions specified in that AD. However, that NPRM does not restate paragraphs (h), (i), (j), (m), (n), and (s) of AD 98–26–01. Instead, certain requirements of paragraphs (h), (i), (j), (m), (n), and (s) of that AD are included in this NPRM, Directorate Identifier 2010–NM–091–AD.
- *Directorate Identifiers 2010–NM–089–AD and 2010–NM–090–AD.* Both of these NPRMs include the requirements of certain other paragraphs of AD 98–26–01.

Relevant Service Information

Airbus has issued the service bulletins listed in the table below.

TABLE—SERVICE INFORMATION

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2002	03	November 28, 2006.
Airbus Mandatory Service Bulletin A310–57–2006	04	May 21, 2007.
Airbus Mandatory Service Bulletin A310–57–2032	04	December 1, 2006.
Airbus Mandatory Service Bulletin A310–57–2038	04	October 19, 2006.
Airbus Mandatory Service Bulletin A310–57–2046	08	December 1, 2006.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 44 products of U.S. registry. We also estimate that it would take about 97 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $362,780, or $8,245 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–1275; Directorate Identifier 2010–NM–091–AD.

Comments Due Date

(a) We must receive comments by February 17, 2011.

Affected ADs

(b) This AD affects AD 90–19–07, Amendment 39–6731; and AD 91–06–18, Amendment 39–6940.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all certified models, all serial numbers.

Subject

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

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France Airworthiness Directive (AD) 1992–106–132(B) * * * was issued to require a set of inspection- and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure. * * *.

* * * * *

The unsafe condition is reduced structural integrity of the wings.

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 Certain Requirements of AD 98–26–01, Amendment 39–10942, With Reduced Compliance Times

Leading Edge Access Panels Landing—Lower Skin—Inspection for Cracks at Bolt Holes

(g) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification No. 05101 has been embodied in production, or on which Airbus Service Bulletin A310–57–2003 has been embodied in service before the accumulation of 9,400 total flight cycles and 18,800 total flight hours: At the times specified in paragraph (h) of this AD, perform a detailed visual inspection to detect cracks in the external surface of the wing lower skin around the landing access panel holes of the leading edge, in accordance with the Airbus Service Bulletin A310–57–2002, Revision 1, dated July 2, 1992; Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996; or Airbus Mandatory Service Bulletin A310–57–2002, Revision 03, dated November 28, 2006. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent) or EASA (or its delegated agent). Except as required by paragraph (n) of this AD, repeat the detailed inspection specified in this paragraph at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD; and thereafter at intervals not to exceed 2,300 flight cycles or 4,700 flight hours, whichever occurs first. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2002, Revision 03, dated November 28, 2006. Accomplishment of Airbus Modification 05101 (Airbus Service Bulletin A310–57–2003) before the effective date of this AD terminates the repetitive inspection requirements of this paragraph; however, airplanes identified in paragraph (n) of this AD are applicable to the new inspections required by paragraph (n) of this AD. As of the effective date of this AD: Accomplishment of Airbus Modification 05101 (Airbus Service Bulletin A310–57–2003) before the accumulation of 9,400 total flight cycles and 18,800 total flight hours terminates the repetitive inspection requirements of this paragraph.

Note 1: As of the effective date of this AD, if Airbus Service Bulletin A310–57–2003 is done on or after the accumulation of 9,400 total flight cycles or on or after the accumulation of 18,800 total flight hours, the actions specified in paragraph (g) of this AD are still required.

(1) Within 3,000 flight cycles after doing the detailed inspection specified in paragraph (g) of this AD.

(2) At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 2,300 flight cycles or 4,700 flight hours, whichever occurs first, after doing the detailed inspection required by paragraph (g) of this AD.

(ii) Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.

(h) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification No. 05101 has been embodied in production, or on which Airbus Service Bulletin A310–57–2003 has been embodied in service before the accumulation of 9,400 total flight cycles and 18,800 total flight hours: At the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do the detailed inspection required by paragraph (g) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999 (the effective date of AD 98–26–01, amendment 39–10942), whichever occurs later.

(2) At the later of the times specified in paragraph (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Prior to the accumulation of 9,400 total flight cycles or 18,800 total flight hours, whichever occurs first.

(ii) Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.

Inspect Area Around Overwing Refuelling Aperture at Ribs 13–14

(i) For Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes that are listed in Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996, and are identified as Configuration 1 in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007: Prior to the accumulation of 6,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later, perform an eddy current inspection to detect cracks in the holes around the overwing refueling aperture at ribs 13–14, in accordance with Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996; or Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007. If any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996; or Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007; except where the service bulletin specifies to contact Airbus for repair, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the DGAC (or its delegated agent) or EASA (or its delegated agent). Repeat the inspection specified in this paragraph at the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD, and thereafter at intervals not to exceed 2,300 flight cycles or 4,600 flight hours, whichever occurs first. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007. Accomplishment of Airbus Modification 5891H5128 (Airbus Service Bulletin A310–57–2020) terminates the repetitive inspections required by this paragraph.

(1) Within 3,000 flight cycles after doing the last inspection required by paragraph (i) of this AD.

(2) At the later of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Within 2,300 flight cycles or 4,600 flight hours, whichever occurs first, after doing the most recent inspection required by paragraph (i) of this AD.

(ii) Within 380 flight cycles or 770 flight hours, whichever occurs first, after the effective date of this AD.

Upper Skin Forward of Front Spar—Inspection for Cracks

(j) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996, except airplanes on which Airbus modification 05026 has been embodied in production, or on which Airbus Service Bulletin A310–57–2005 has been done in service before the accumulation of 10,500 total flight cycles and 21,000 total flight hours: At the times specified in paragraph (k) of this AD, perform a detailed visual inspection to detect cracks around the bolts in the wing top skin upper surface of the front spar between rib 7 and rib 28, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996; or Airbus Mandatory Service Bulletin A310–57–2032, Revision 04, dated December 1, 2006. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or DGAC (or its delegated agent) or EASA (or its delegated agent). Except as required by paragraph (p) of this AD, repeat the detailed inspection specified in this paragraph at the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD, and thereafter at intervals not to exceed 3,900 flight cycles or 7,900 flight hours, whichever occurs first. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2032, Revision 04, dated December 1, 2006. Accomplishment of Airbus Modification 5026H0878 (Airbus Service Bulletin A310–57–2005) before the effective date of this AD terminates the repetitive inspection requirements of this paragraph; however, airplanes identified in paragraph (p) of this AD are applicable to the new inspections required by paragraph (p) of this AD. As of the effective date of this AD: Accomplishment of Airbus Modification 5026H0878 (Airbus Service Bulletin A310–57–2005) before the accumulation of 10,500 total flight cycles and 21,000 total flight hours terminates the repetitive inspection requirements of this paragraph.

(1) Within 4,500 flight cycles after doing the last inspection required by paragraph (j) of this AD.

(2) At the later of the times specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD.

(i) Within 3,900 flight cycles or 7,900 flight hours, whichever occurs first, after doing the most recent inspection required by paragraph (j) of this AD.

(ii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

Note 2: As of the effective date of this AD, if Airbus Service Bulletin A310–57–2005 is

done on or after the accumulation of 10,500 total flight cycles or on or after the accumulation of 21,000 total flight hours, the actions specified in paragraph (j) of this AD are still required.

(k) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996, except airplanes on which Airbus modification 05026 has been embodied in production, or on which Airbus Service Bulletin A310–57–2005 has been done in service before the accumulation of 10,500 total flight cycles and 21,000 total flight hours: At the earlier of the times specified in paragraphs (k)(1) and (k)(2) of this AD, do the detailed inspection required by paragraph (j) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later.

(2) At the later of the times specified in paragraphs (k)(2)(i) and (k)(2)(ii) of this AD.

(i) Prior to the accumulation of 10,500 total flight cycles or 21,000 total flight hours, whichever occurs first.

(ii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

Stringer Flanges at Rib 14 Wing Bottom Skin—Inspect for Cracks

(l) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification 04987 has been done in production: At the compliance time specified in paragraph (m) of this AD, perform a high frequency eddy current (HFEC) or X-ray inspection to detect cracking of the stringer runouts inboard and outboard of rib 14 at stringers 6, 7, 8, and 9, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996; or Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006. Do the next inspection at the earlier of the times specified in paragraph (l)(1) and (l)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed the applicable times specified in Table 1 of this AD. If any crack is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or DGAC (or its delegated agent) or EASA (or its delegated agent). As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006.

(1) Within the applicable interval specified in paragraph 1.B.(5) of Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996.

(2) At the later of the times specified in paragraph (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Within the applicable interval specified in Table 1 of this AD after doing the most recent inspection specified in paragraph (l) of this AD.

(ii) Within 1,100 flight cycles or 2,300 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 1—REPETITIVE INTERVALS, DEPENDING ON INSPECTION TYPE

Type of inspection	Repetitive interval (not to exceed)
X–Ray	7,200 flight cycles or 14,500 flight hours, whichever occurs first.
HFEC	9,400 flight cycles or 18,800 flight hours, whichever occurs first.

(m) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification 04987 has been done in production: At the earlier of the times specified in paragraphs (m)(1) and (m)(2) of this AD, perform an inspection required by paragraph (l) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 1,500 flight cycles after January 20, 1999, whichever occurs later.

(2) At the later of the times specified in paragraphs (m)(2)(i) and (m)(2)(ii) of this AD.

(i) Prior to the accumulation of 12,000 total flight cycles or 24,000 total flight hours, whichever occurs first.

(ii) Within 1,100 flight cycles or 2,300 flight hours after the effective date of this AD, whichever occurs first.

New Requirements of This AD

Leading Edge Access Panels Landing—Lower Skin—Inspection for Cracks at Bolt Holes—Additional Inspections for Certain Airplanes

(n) For Model A310–203 and A310–222 airplanes, on which Airbus Service Bulletin A310–57–2003 has been done in service on or after the accumulation of 9,400 total flight cycles or on or after the accumulation of 18,800 total flight hours: Do the inspection required by paragraph (g) of this AD at the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD. Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 2,300 flight cycles or 4,700 flight hours, whichever occurs first.

(1) Within 2,300 flight cycles or 4,700 flight hours, whichever occurs first, after doing the most recent detailed inspection required by paragraph (g) of this AD.

(2) Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.

Inspect Area Around Overwing Refuelling Aperture at Ribs 13–14 for Additional Airplanes

(o) For Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes, except for airplanes identified in paragraph (i) of this AD on which Airbus Modification 05891H5128 (Airbus Service Bulletin A310–57–2020) has not been done: At the applicable compliance time specified in Table 2 of this AD, do the applicable actions specified in paragraph (o)(1) or (o)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007. If any cracking is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007; except where this service bulletin specifies to contact Airbus for repair, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent). Repeat the inspections thereafter at the applicable interval specified in Table 2 of this AD. Certain compliance times specified in Table 2 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours. For airplanes identified as Configuration 01 in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007, accomplishment of Airbus Modification 05891H5128 (Airbus Service Bulletin A310–57–2020) terminates the repetitive inspections required by this paragraph for Configuration 01 airplanes; thereafter do the applicable actions specified in paragraph (o)(2) of this AD at the times specified in Table 2 of this AD.

(1) For Configuration 01 airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007: Do a rotating probe eddy current inspection for cracking in the holes around the overwing refueling aperture at ribs 13–14.

(2) For Configuration 02 through 06 airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007: Do an external detailed inspection for cracking of the top skin at ribs 13–14, and an internal detailed inspection for cracking of string 7 and string 8 of the overwing refuel aperture.

TABLE 2—COMPLIANCE TIMES FOR CONFIGURATION 01 THROUGH 06 AIRPLANES

Airplanes as Identified in Airbus Mandatory Service Bulletin A310-57-2006, Revision 04, dated May 21, 2007	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Configuration 01 airplanes	Prior to the accumulation of 6,000 total flight cycles.	Within 380 flight cycles or 770 flight hours, whichever occurs first, after the effective date of this AD.	2,300 flight cycles or 4,600 flight hours, whichever occurs first.
Configuration 02 airplanes	Within 30,900 flight cycles or 61,900 flight hours, whichever occurs first, after accomplishing Airbus Service Bulletin A310–57–2020.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	11,300 flight cycles or 22,600 flight hours, whichever occurs first.
Configuration 03 airplanes	Within 30,900 flight cycles or 61,900 flight hours, whichever occurs first, after Airbus Modification 05891H5128 is done or Airbus Service Bulletin A310–57–2020 is accomplished.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	12,000 flight cycles or 24,000 flight hours, whichever occurs first.
Configuration 04 and 05 short range airplanes.	Before the accumulation of 25,900 total flight cycles or 72,500 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	12,000 flight cycles or 33,600 flight hours, whichever occurs first.
Configuration 04 and 05 long range airplanes.	Before the accumulation of 18,800 total flight cycles or 94,200 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	9,400 flight cycles or 47,200 flight hours, whichever occurs first.
Configuration 06	Before the accumulation of 30,900 total flight cycles or 61,900 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	12,000 flight cycles or 24,000 flight hours, whichever occurs first.

Upper Skin Forward of Front Spar—Inspection for Cracks—Additional Inspections for Certain Airplanes

(p) For Model A310–203 and A310–222 airplanes on which Airbus Service Bulletin A310–57–2005 has been done in service on or after the accumulation of 10,500 total flight cycles or on or after 21,000 total flight hours: Do the inspection required by paragraph (j) of this AD at the later of the times specified in paragraphs (p)(1) and (p)(2) of this AD. Repeat the inspection specified in paragraph (j) of this AD thereafter at intervals not to exceed 3,900 flight cycles or 7,900 flight hours, whichever occurs first.

(1) Within 3,900 flight cycles or 7,900 flight hours, whichever occurs first, after doing the most recent inspection required by paragraph (j) of this AD.

(2) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

Inspection of Rear Spar at Selected Bolt Locations for Attachment of Main Landing Gear Forward Pick-Up Fitting

(q) For Model A310–203, A310–204, A310–222, A310–304, A310A–322, and A310–324 airplanes, except airplanes on which Airbus modification 07601 has been done in production: Do the applicable actions specified in paragraphs (q)(1), (q)(2), and (q)(3) of this AD. If any cracking is found during any inspection, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Note 3: For Model A310–304, A310A–322, and A310–324 airplanes on which Airbus modification 07601 has been done, guidance for post-modification inspections can be found in Structure Significant Item (SSI) 57.21.16 of the Maintenance Review Board Document (MRBD).

(1) For airplanes on which Airbus Modification 07925H1113 (Airbus Service Bulletin A310–57–2049) and Modification 11578H5436 (Airbus Service Bulletin A310–57–2074) have not been done: At the applicable time specified in Table 3 of this AD, perform an ultrasonic inspection for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006. Repeat the inspection thereafter at the applicable interval specified in Table 3 of this AD until Airbus Modification 07925H1113 (Airbus Service Bulletin A310–57–2049) or 11578H5436 (Airbus Service Bulletin A310–57–2074) has been done. After doing Airbus Modification 07925H1113 (Airbus Service Bulletin A310–57–2049) or 11578H5436 (Airbus Service Bulletin A310–57–2074) do the applicable actions specified in paragraph (q)(2) or (q)(3) of this AD at the times specified in paragraph (q)(2) or (q)(3) of this AD, as applicable. Certain compliance times specified in Table 3 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours.

TABLE 3—COMPLIANCE TIMES FOR AIRPLANES PRE-MOD 07925 AND PRE-MOD 11578

Airplanes	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Model A310–203, A310–204, and A310–222 airplanes.	Prior to the accumulation of 9,800 total flight cycles or 19,600 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	2,800 flight cycles or 5,700 flight hours, whichever occurs first.

TABLE 3—COMPLIANCE TIMES FOR AIRPLANES PRE-MOD 07925 AND PRE-MOD 11578—Continued

Model A310–304, A310A–322, and A310–324 short range airplanes.	Prior to the accumulation of 7,100 total flight cycles or 20,100 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	2,400 flight cycles or 6,900 flight hours, whichever occurs first.
Model A310–304, A310A–322, and A310–324 long range airplanes.	Prior to the accumulation of 5,700 total flight cycles or 28,600 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	1,900 flight cycles or 9,800 flight hours, whichever occurs first.

(2) For airplanes on which Airbus Modification 07925H1113 (Airbus Service Bulletin A310–57–2049) has been done: At the applicable time specified in Table 4 of this AD, perform an ultrasonic inspection for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006. Repeat the inspection thereafter at the applicable interval specified in Table 4 of this AD. Certain compliance times specified in Table 4 of this AD are applicable to short range use, AFT equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours.

TABLE 4—COMPLIANCE TIMES FOR AIRPLANES POST-MOD 07925

Airplanes	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Model A310–203, A310–204, and A310–222 airplanes.	Prior to the accumulation of 14,700 total flight cycles or 29,400 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	9,400 flight cycles or 18,900 flight hours, whichever occurs first.
Model A310–304, A310A–322, and A310–324 short range airplanes.	Prior to the accumulation of 11,900 total flight cycles or 33,500 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	5,000 flight cycles or 14,000 flight hours, whichever occurs first.
Model A310–304, A310A–322, and A310–324 long range airplanes.	Prior to the accumulation of 9,500 total flight cycles or 47,700 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	4,000 flight cycles or 20,000 flight hours, whichever occurs first.

(3) For airplanes on which Airbus Modification 11578H5436 (Airbus Service Bulletin A310–57–2074) has been done: At the applicable time specified in Table 5 of this AD, perform an ultrasonic inspection for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006. Repeat the inspection thereafter at the applicable interval specified in Table 5 of this AD. Certain compliance times specified in Table 5 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours.

TABLE 5—COMPLIANCE TIMES FOR AIRPLANES POST-MOD 11578

Airplanes	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Model A310–203, A310–204, and A310–222 airplanes.	Within 29,600 flight cycles or 59,200 flight hours, whichever occurs first, after Airbus Modification 11578H5436 (Airbus Service Bulletin A310–57–2074) has been done.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	9,400 flight cycles or 18,900 flight hours, whichever occurs first.
Model A310–304, A310A–322, and A310–324 short range airplanes.	Within 24,200 flight cycles or 67,900 flight hours, whichever occurs first, after Airbus Modification 11578H5436 (Airbus Service Bulletin A310–57–2074) has been done.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	5,000 flight cycles or 14,000 flight hours, whichever occurs first.
Model A310–304, A310A–322, and A310–324 long range airplanes.	Within 19,300 flight cycles or 96,800 flight hours, whichever occurs first, after Airbus Modification 11578H5436 (Airbus Service Bulletin A310–57–2074) has been done.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	4,000 flight cycles or 20,000 flight hours, whichever occurs first.

Credit for Actions Accomplished in Accordance With Previous Service Information

(r) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2038, Revision 03, dated September 4, 1998, are acceptable for compliance with the corresponding actions specified in paragraph (l) of this AD.

(s) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2046, Revision 07, dated April 2, 1999, are acceptable for compliance with the corresponding actions specified in paragraph (q) of this AD.

Terminating Action for Paragraph (a) of AD 90–19–07, Amendment 39–6731

(t) Accomplishing an inspection in accordance with Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996, or Revision 03, dated September 4, 1998; or Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006; terminates the requirements of paragraph (a) of AD 90–19–07, Amendment 39–6731.

Note 4: Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996; and Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006; are referred to in paragraph (l) of this AD. Airbus Service Bulletin A310–57–2038, Revision 03, dated September 4, 1998, is referred to in paragraph (r) of this AD.

Terminating Action for AD 91–06–18, Amendment 39–6940

(u) Accomplishing an inspection in accordance with Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996, as revised by Airbus Service Bulletin Change Notice 4A, dated October 16, 1996; Airbus Service Bulletin A310–57–2046, Revision 07, dated April 2, 1999; or Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006; terminates the requirements of AD 91–06–18, amendment 39–6940.

Note 5: Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006, is referred to in paragraph (q) of this AD. Airbus Service Bulletin A310–57–2046, Revision 07, dated April 2, 1999, is referred to in paragraph (s) of this AD. Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996, as revised by Airbus Service Bulletin Change Notice 4A, dated October 16, 1996, is referred to in paragraph (n) of AD 98–26–01.

FAA AD Differences

Note 6: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (j) of this AD requires that you repair the crack(s) before further flight.

Other FAA AD Provisions

(v) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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. AMOCs approved previously in accordance with AD 98–26–01, amendment 39–10942, are approved as AMOCs for the corresponding provisions of 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(w) Refer to MCAI EASA Airworthiness Directive 2007–0242, dated September 4, 2007; and Airbus service bulletins listed in Table 6 of this AD; for related information.

TABLE 6—RELATED SERVICE INFORMATION

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2002	03	November 28, 2006.
Airbus Mandatory Service Bulletin A310–57–2006	04	May 21, 2007.
Airbus Mandatory Service Bulletin A310–57–2032	04	December 1, 2006.
Airbus Mandatory Service Bulletin A310–57–2038	04	October 19, 2006.
Airbus Mandatory Service Bulletin A310–57–2046	08	December 1, 2006.
Airbus Service Bulletin A310–57–2038	2	January 4, 1996.
Airbus Service Bulletin A310–57–2038	03	September 4, 1998.
Airbus Service Bulletin A310–57–2032	3	January 4, 1996.
Airbus Service Bulletin A310–57–2002	2	January 4, 1996.
Airbus Service Bulletin A310–57–2006	3	May 2, 1996.
Airbus Service Bulletin A310–57–2046	4	October 16, 1996.
Airbus Service Bulletin A310–57–2046	07	April 2, 1999.
Airbus Service Bulletin A310–57–2046, Change Notice 4A	Original	October 16, 1996.

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32989 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1276; Directorate Identifier 2010–NM–092–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) * * * has been issued in order to mandate a set of inspections/modifications which address JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings, fuselage, and stabilizers. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 17, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1276; Directorate Identifier 2010–NM–092–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On December 8, 1998, we issued AD 98–26–01, Amendment 39–10942 (63 FR 69179, December 16, 1998); and on May 30, 1991, we issued AD 91–13–01, Amendment 39–7032 (56 FR 26602, June 10, 1991). Those ADs required actions intended to address an unsafe condition on the products listed above.

Since we issued ADs 98–26–01 and 91–13–01, we have determined that certain compliance times need to be reduced in order to adequately address the identified unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0053R3, dated December 17, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) original issue up to revision 7 has been issued in order to mandate a set of inspections/modifications which address JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure [FAA AD 98–26–01 corresponds to DGAC AD 1992–106–132(B)R4, dated June 5, 1996].

Following the Extended Design Service Goal activities part of the Structure Task Group for the A310 program, EASA AD 2007–0053 superseded DGAC France AD F–1992–106–132R7 in order to take into account the publication of Airbus Service Bulletins (SB) A310–55–2004 at Revision 5 and Airbus SB A310–53–2074 at Revision 3, whose inspection thresholds and/or intervals had been reduced.

Revision 1 of this AD was issued to remove the mandatory requirements related to the wings (*i.e.* § 1.8, 1.9, 1.10, 1.13, and 1.18) from the Compliance section, which have been transferred to EASA AD 2007–0242.

Revision 2 of this AD has been issued to remove the mandatory requirements of paragraph 1.15, 1.16 and 1.17 which have now been transferred to EASA AD 2009–0057 (§ 1.15 and 1.17) and 2009–0058 (§ 1.16) respectively.

Revision 3 of this AD is issued to add a Note to the Applicability and amend the Required Action(s) and Compliance Time(s) section of this AD to clarify the allowed use of the referenced SBs by operators. In addition, a note has been added to paragraph 1.7 and the notes associated to paragraphs 1.1, 1.2, 1.3, 1.4, 1.5 and 1.12 have been clarified.

The unsafe condition is reduced structural integrity of the wings, fuselage, and stabilizers. This NPRM proposes to continue to require certain actions specified in AD 98–26–01. This proposed AD also expands the inspection area of the high frequency eddy current rototest inspection

required by paragraph (g) of AD 98–26–01. The required actions are as follows, depending on airplane configuration:

• A defectoscope or rototest inspection to detect cracks in the area of frame 47 and frame 54, install new doublers, and repair if necessary.

• Repetitive visual inspections to detect cracks on frame 46 between the left- and right-hand sides of stringers 21 and 22 on the forward and aft faces, and repair if necessary.

• Repetitive visual inspections to detect cracks at the T-section connecting frame 50A to the beam between the left- and right-hand sides of frames 50 and 51, and modification if necessary.

• Repetitive visual inspections to detect cracks in the lower milled side panel at the lap joint with the upper side panel at frame 47 and stringer 22, left- and right-hand sides, and repair if necessary.

• An eddy current inspection to detect cracks on the upper integral part adjacent to the rear attach fittings on the horizontal stabilizer, modification of the horizontal stabilizer, and repair if necessary.

• Repetitive high frequency eddy current rototest inspections for cracking of the doubler plate edge, rear spar area, and at specified fastener holes in the top skin chordwise splice along the contour of the steel doubler between ribs 3 and 4 on the left- and right-hand center and side boxes on the horizontal stabilizer, installing new fasteners if no cracking is found, and repair if necessary.

• Repetitive inspections, either an eddy current or visual inspection, to detect cracks on the left and right vertical posts, numbers 1 through 5 inclusive, in the wing center box at frame 40/41, and modification if necessary.

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

Other Relevant Rulemaking

Certain paragraphs specified in AD 98–26–01 are not restated and are addressed by the following ADs and NPRMs.

• AD 2009–01–09, Amendment 39–15788 (74 FR 8728, February 26, 2009), addresses the actions specified in paragraph (a) of AD 98–26–01.

• AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), addresses the actions specified in paragraph (k) of AD 98–26–01.

• AD 2006–09–05, Amendment 39–14575 (71 FR 25921, May 3, 2006), addresses the actions specified in paragraph (o) of AD 98–26–01.

• NPRM, Directorate Identifier 2010–NM–091–AD, addresses the actions specified in paragraphs (h), (i), (j), (m), (n), and (s) of AD 98–26–01.

• NPRM, Directorate Identifier 2010–NM–090–AD, addresses the action specified in paragraphs (p) and (r) of AD 98–26–01.

• NPRM, Directorate Identifier 2010–NM–089–AD, addresses the action specified in paragraph (q) of AD 98–26–01.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–55–2004, Revision 05, including Appendix 01, dated October 13, 2006; and Airbus Service Bulletin A310–53–2019, Revision 3, dated February 28, 1991. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 44 products of U.S. registry.

The actions that are required by AD 98–26–01 and retained in this proposed AD take about 1,087 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $81,973 per product. Based on these figures, the estimated cost of the currently required actions is $174,368 per product.

We estimate that it would take about 3 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $11,220, or $255 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–10942 (63 FR 69179, December 16, 1998) and Amendment 39–7032 (56 FR 26602, June 10, 1991) and adding the following new AD:

Airbus: Docket No. FAA–2010–1276; Directorate Identifier 2010–NM–092–AD.

Comments Due Date

(a) We must receive comments by February 17, 2011.

Affected ADs

(b) This AD supersedes AD 98–26–01, Amendment 39–10942, and AD 91–13–01, Amendment 39–7032.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all certified models, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Codes 53: Fuselage, 55: Stabilizers, and 57: Wings.

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) original issue up to revision 7 has been issued in order to mandate a set of inspections/modifications which address JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings, fuselage, and stabilizers.

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 Certain Requirements of AD 98–26–01

Actions for Service Bulletin A310–53–2016—No Changes

(g) For airplanes listed in Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999 (the effective date of AD 98–26–01), whichever occurs later, perform a defectoscope or rototest inspection to detect cracks in the area of frame 47 and frame 54, and install new doublers, in accordance with Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992. Except as provided by paragraph (m) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992.

Note 1: Airplanes on which Airbus Modification 04980 is done in production are not affected by paragraph (g) of this AD.

Actions for Service Bulletin A310–53–2054, With Latest Optional Modification

(h) For airplanes listed in Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight cycles, perform a visual inspection to detect cracks on frame 46 between the left- and right-hand sides of stringers 21 and 22 on the forward and aft faces, in accordance with Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990. If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990.

Note 2: Airplanes on which Airbus modification 05254 is done in production; or on which Airbus Service Bulletin A310–53–2019, Revision 2, dated May 22, 1990, or Revision 3, dated February 28, 1991, is done in service; are not affected by paragraph (h) of this AD.

(1) Prior to the effective date of this AD: Accomplishment of the repair required by paragraph (h) of this AD; or modification of the reinforcement angle runout in accordance with Airbus Service Bulletin A310–53–2019, Revision 2, dated May 22, 1990, or Revision 3, dated February 28, 1991; terminates the repetitive inspection requirements of paragraph (h) of this AD.

(2) On or after the effective date of this AD: Accomplishment of the repair required by paragraph (h) of this AD; or modification of the reinforcement angle runout in accordance with Airbus Service Bulletin A310–53–2019, Revision 3, dated February 28, 1991; terminates the repetitive inspection requirements of paragraph (h) of this AD.

Actions for Service Bulletin A310–53–2057—No Changes

(i) For airplanes listed in Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992: Perform a visual inspection to detect cracks at the T-section connecting frame 50A to the beam between the left- and right-hand sides of frames 50 and 51, in accordance with Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992. Perform the inspection at the time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. If any crack is found, prior to further flight, accomplish Airbus Modifications No. 4853 and No. 5273, in accordance with Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992. Accomplishment of these modifications terminates the requirements of this paragraph.

Note 3: Airplanes on which Airbus modification 4853 is done are affected by paragraph (i) of this AD, except those airplanes on which Airbus Modification 5273 has been done or on which Airbus Service Bulletin A310–53–2011 has been done in service.

(1) For the airplane having manufacturer's serial number (MSN) 191: Prior to the accumulation of 24,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 6,000 flight cycles.

(2) For airplanes other than the airplane identified in paragraph (i)(1) of this AD: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 6,000 flight cycles.

Actions for Service Bulletin A310–53–2059—No Changes

(j) For airplanes listed in Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996: Perform a visual inspection to detect cracks in the lower milled side panel at the lap joint with the upper side panel at frame 47 and stringer 22, left- and right-hand sides, in accordance with Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996. Perform the inspection at the time specified in paragraph (j)(1) or (j)(2) of this AD, as applicable. Except as provided by paragraph (m) of this AD, if any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996. Thereafter, repeat the inspections at intervals not to exceed 9,000 flight cycles, or accomplish Airbus Modification 5997 (Airbus Service Bulletin A310–53–2058). Accomplishment of either the repair or Airbus Modification 5997 constitutes terminating action for the repetitive inspections required by this paragraph.

Note 4: Airplanes on which Airbus Modification 5997 has been done completely in production, or on which Airbus Service Bulletin A310–53–2058 has been done in service, are not affected by the actions in paragraph (j) of this AD.

(1) For Model A310–200 series airplanes, accomplish the inspection at the time specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 20,000 total flight cycles as of January 20, 1999: Prior to the accumulation of 18,000 total flight cycles, or within 2,000 flight cycles after January 20, 1999, whichever occurs later.

(ii) For airplanes that have accumulated 20,000 or more total flight cycles as of January 20, 1999: Within 1,000 flight cycles after January 20, 1999.

(2) For Model A310–300 series airplanes, accomplish the inspection at the time

specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 19,700 total flight cycles as of January 20, 1999: Prior to the accumulation of 18,000 total flight cycles, or within 1,700 flight cycles after January 20, 1999, whichever occurs later.

(ii) For airplanes that have accumulated 19,700 or more total flight cycles as of January 20, 1999: Within 850 flight cycles after January 20, 1999.

Actions for Service Bulletin A310–55–2002—No Changes

(k) For airplanes listed in Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later, perform an eddy current inspection to detect cracks on the upper integral part adjacent to the rear attach fittings on the horizontal stabilizer, and modify the horizontal stabilizer, in accordance with Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989. Except as provided by paragraph (m) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989.

Actions for Service Bulletin A310–57–2039—No Changes

(l) For airplanes listed in Airbus Service Bulletin A310–57–2039, dated September 24, 1990: Perform either an eddy current or visual inspection to detect cracks on the left and right vertical posts, numbers 1 through 5 inclusive, in the wing center box at frame 40/41, in accordance with Airbus Service Bulletin A310–57–2039, dated September 24, 1990. Perform the inspection at the time specified in paragraph (l)(1) or (l)(2) of this AD, as applicable. Except as provided by paragraph (m) of this AD, if any crack is found, prior to further flight, accomplish the modification specified in Airbus Service Bulletin A310–57–2041, dated September 24, 1990, in accordance with Airbus Service Bulletin A310–57–2039, dated September 24, 1990.

Note 5: Airplanes on which Airbus Modification 04977 has been done in production are not affected by the actions specified in paragraph (l) of this AD.

(1) For airplanes on which Airbus Modification 7541/S7973 (reference Airbus Service Bulletin A310–57–2041) has not been accomplished: Inspect prior to the accumulation of 21,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 4,200 flight cycles (for a visual inspection), or 7,500 flight cycles (for an eddy current inspection).

(2) For airplanes on which Airbus Modification 7541/S7973 (reference Airbus Service Bulletin A310–57–2041) has been accomplished: Inspect at the time specified in the graph contained in NOTE 1 of paragraph 1.A.(2) of Airbus Service Bulletin A310–57–2039, dated September 24, 1990, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 5,000 flight cycles (for a visual inspection), or 8,600 flight cycles (for an eddy current inspection).

Exception to Certain Service Bulletin Repairs

(m) If any crack is found during any inspection required by paragraph (g), (j), (k), or (l) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent), or EASA (or its delegated agent).

New Requirements of This AD: Actions

Actions for Service Bulletin A310–55–2004

(n) For airplanes listed in Airbus Mandatory Service Bulletin A310–55–2004, Revision 05, dated October 13, 2006: At the applicable time specified in paragraph (n)(1) or (n)(2) of this AD, do a high frequency eddy current inspection for cracking of the doubler plate edge, the rear spar area, and specified fastener holes in the top skin chordwise splice along the contour of the steel doubler between ribs 3 and 4 on the left- and right-hand center and side boxes on the horizontal stabilizer, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2004, Revision 05, dated October 13, 2006. If any cracking is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2004, Revision 05, dated October 13, 2006; except where this service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, or EASA (or its delegated agent). Thereafter, repeat the inspections at intervals not to exceed 9,700 flight cycles or 19,500 flight hours, whichever occurs first; except as required by paragraph (o) of this AD for the rear spar area.

Note 6: Airplanes on which Airbus Modification 06070 has been done in production are not affected by the actions specified in paragraph (l) of this AD.

(1) For airplanes on which Airbus Service Bulletin A310–55–2002 was accomplished prior to the accumulation of 6,000 total flight cycles on the airplane; and for airplanes having MSN 311 through 400 inclusive on which Airbus Modification 4933 was accomplished during production: Do the inspection at the later of the compliance times specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD.

(i) Prior to the accumulation of 14,400 total flight cycles or 28,500 total flight hours, whichever occurs first.

(ii) Within 1,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

(2) For airplanes on which Airbus Service Bulletin A310–55–2002 was accomplished on or after the accumulation of 6,000 total flight cycles: Do the inspection at the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Within 9,700 flight cycles or 19,500 flight hours after accomplishing the modification, whichever occurs first.

(ii) Within 1,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

(o) For airplanes on which the initial inspection required by paragraph (n) of this AD has been done and on which a repair was installed at fastener position A in accordance with Airbus Service Bulletin A310–55–2002: At the later of the times specified in paragraphs (o)(1) and (o)(2) of this AD, do a high frequency eddy current inspection for cracking of the rear spar area as specified in paragraph (n) of this AD, and repeat the high frequency eddy current inspection of the rear spar area thereafter at intervals not to exceed 4,800 flight cycles or 9,700 flight hours, whichever occurs first.

(1) Within 4,800 flight cycles or 9,700 flight hours, whichever occurs first, after doing the repair in accordance with Airbus Service Bulletin A310–55–2002.

(2) Within 400 flight cycles or 800 flight hours, whichever occurs first, after the effective date of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(p) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–55–2004, Revision 2, dated February 7, 1991; Revision 3, dated April 16, 1997; and Revision 04, dated April 17, 2001; are acceptable for compliance with the corresponding actions specified in paragraph (n) 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

(q) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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. AMOCs approved previously in accordance with AD 98–26–01, amendment 39–10942, are approved as AMOCs for the corresponding provisions of 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(r) Refer to MCAI EASA Airworthiness Directive 2007–0053R3, dated December 17, 2009, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

Service bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–55–2004	05	October 13, 2006.
Airbus Service Bulletin A310–53–2016	5	December 7, 1992.
Airbus Service Bulletin A310-53-2019	3	February 28, 1991.
Airbus Service Bulletin A310–53–2054	2	May 22, 1990.
Airbus Service Bulletin A310–53–2057	1	April 30, 1992.
Airbus Service Bulletin A310–53–2059	1	January 4, 1996.
Airbus Service Bulletin A310–55–2002	4	April 28, 1989.
Airbus Service Bulletin A310–57–2039	Original	September 24, 1990.
Airbus Service Bulletin A310–57–2041	Original	September 24, 1990.

Issued in Renton, Washington on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32983 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1273; Directorate Identifier 2010–NM–089–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–203, –204, –222, –304, –322, and –324 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A specific area, the *lower tail plane cut-out* located in the tail cone is subject to an inspection programme [for cracking] * * *.

* * * * *

The unsafe condition is reduced structural integrity of the tail cone. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 17, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1273; Directorate Identifier 2010–NM–089–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0058, dated March 13, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A specific area, the *lower tail plane cut-out* located in the tail cone is subject to an inspection programme specified in the Airbus Service Bulletin (SB) A310–53–2074. EASA issued AD 2007–0053 [which superseded French AD 1992–106–132 R6; French AD 1992–106–132 corresponds to FAA AD 98–26–01] to require the accomplishment of this SB at Revision 03.

Airbus has established that this SB needed to be revised in order to state correct threshold and intervals due to errors introduced at revision 03. Consequently, revision 04 of this SB has been issued, and opportunity was taken:

—To clarify the inspection area and associated threshold and intervals

—To take aeroplane utilisation into consideration, in accordance with the A310 life extension programme.

For the reasons stated above, this EASA AD takes over the requirements of paragraph 1.16 of EASA AD 2007–0053R1 [currently at R3], which has been revised accordingly, and requires accomplishment of the instructions contained in Airbus SB A310–53–2074 at Revision 04.

The unsafe condition is reduced structural integrity of the tail cone. The required actions include repetitive and one-time inspections, depending on the area, of the lower tail plane cut-out, and corrective actions if necessary. The inspections include the following:

- Detailed inspections in areas 1, 2, and 3 for cracking and corrosion of the lower horizontal stabilizer cutout longeron, the corner fitting, the skin strap, and the skin.
- Detailed inspections in areas 1, 2, and 3 for damaged sealant.
- Eddy current inspections in area 1 for cracking.
- Eddy current inspections in area 2 for cracking.
- Rotating probe inspection for cracking of specified fastener holes in Area 3.

The corrective actions, depending on the conditions found, include the following:

- Repairing corrosion.
- Contacting Airbus for repair instructions.
- Replacing damaged sealant.
- Removing cracking.
- Doing an eddy current inspection for cracking of the reworked area.
- Installing a new corner fitting.
- Doing a rotating probe inspection for cracking of fastener holes.
- Doing an eddy current inspection of the longeron and outer skin.
- Drilling or reaming fastener holes.

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

Other Relevant Rulemaking

We are considering issuing three other NPRMs related to this NPRM:

- Directorate Identifier 2010–NM–092–AD. That NPRM proposes to supersede AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998), to continue to require certain actions specified in that AD. However, that NPRM does not restate paragraph (q) of AD 98–26–01. Instead, certain requirements of paragraph (q) of that AD are included in this NPRM, Directorate Identifier 2010–NM–089–AD.
- Directorate Identifiers 2010–NM–090–AD and 2010–NM–091–AD. Both of these NPRMs include the requirements of certain other paragraphs of AD 98–26–01.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 44 products of U.S. registry. We also estimate that it would take about 36 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $134,640, or $3,060 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–1273; Directorate Identifier 2010–NM–089–AD.

Comments Due Date

(a) We must receive comments by February 17, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A310–203, –204, –222, –304, –322, and –324 airplanes, certificated in any category, all serial numbers, except airplanes on which Airbus modification 06146 has been done in production.

Subject

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

Reason

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

A specific area, *the lower tail plane cut-out* located in the tail cone is subject to an inspection programme [for cracking] * * *.

* * * * *

The unsafe condition is reduced structural integrity of the tail cone.

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.

Initial Inspections of the Lower Tail Plane Cut-Out Area and Corrective Actions

(g) Within the applicable time specified in Table 1 of this AD, do the inspections of the lower tail plane cut-out area in the tail cone specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) of this AD, as applicable, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008 ("the service bulletin"). Certain compliance times are applicable to short-range use (*i.e.,* average flight time (AFT) equal to or less than 4 flight hours), or long-range use (*i.e.,* AFT exceeding 4 flight hours). Inspection areas are specified in the service bulletin.

Note 1: To establish the average flight time, take the accumulated flight time (counted from the take-off up to the landing) and divide by the number of accumulated flight cycles. This gives the average flight time per flight cycle.

TABLE 1—INITIAL COMPLIANCE TIME

Airplanes	Inspection areas	Compliance time (whichever occurs later)	
Model A310–203, A310–204, and A310–222 airplanes.	1 and 2	Prior to the accumulation of 18,000 total flight cycles or 36,000 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–203, A310–204, and A310–222 airplanes.	3	Prior to the accumulation of 24,000 total flight cycles or 48,000 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 short range airplanes.	1 and 2	Prior to the accumulation of 12,000 total flight cycles or 33,750 total flight hours, whichever occurs first.	Within 1,200 flight cycles or 3,300 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 short range airplanes.	3	Prior to the accumulation of 18,000 total flight cycles or 50,500 total flight hours, whichever occurs first.	Within 1,200 flight cycles or 3,300 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 long range airplanes.	1 and 2	Prior to the accumulation of 7,500 total flight cycles or 37,500 total flight hours, whichever occurs first.	Within 750 flight cycles or 3,750 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 long range airplanes.	3	Prior to the accumulation of 11,250 total flight cycles or 56,000 total flight hours, whichever occurs first.	Within 750 flight cycles or 3,750 flight hours, whichever occurs first, after the effective date of this AD.

(1) For areas 1, 2, and 3: Do a detailed inspection for cracking and corrosion of the lower horizontal stabilizer cutout longeron, the corner fitting, the skin strap, and the skin, in accordance with the Accomplishment Instructions of the service bulletin.

(i) If any corrosion is found, before further flight, repair in accordance with the Accomplishment Instructions of the service bulletin.

(ii) If any cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(2) For areas 1, 2, and 3 on which cracking is not found during the inspection required by paragraph (g)(1) of this AD: Do a detailed inspection for damaged sealant; and, if any damaged sealant is found, before further flight, replace the sealant; in accordance with the Accomplishment Instructions of the service bulletin.

(3) For area 1: Do an eddy current inspection for cracking in area 1; and, if no cracking is found, before further flight, apply sealant and corrosion compound, as applicable; in accordance with the Accomplishment Instructions of the service bulletin.

(i) If cracking is equal to or less than 2.0 mm (0.079 inch) long and not more than 2 cracks with a minimum distance of 50.0 mm (1.969 inch) between the cracks: Before further flight, remove any cracking and do an eddy current inspection for cracking of the reworked area, in accordance with the Accomplishment Instructions of the service bulletin. If no cracking is found, before further flight, shot peen the reworked area, in accordance with the Accomplishment Instructions of the service bulletin.

(A) If cracking is found and the radius of the rework is less than 20.0 mm (0.787 inch), before further flight, increase the radius and do an eddy current inspection for cracking of the reworked area, in accordance with the Accomplishment Instructions of the service bulletin. If no cracking is found, before further flight, shot peen the reworked area, in accordance with the Accomplishment Instructions of the service bulletin.

(1) If any cracking is found in the outer skin, before further flight, contact Airbus for repair instructions and do the repair.

(2) If any cracking is found in the corner fitting and area 3 has not been cold expanded, before further flight, install new corner fitting, in accordance with the Accomplishment Instructions of the service bulletin, and do the rotating probe inspection in area 3 specified in paragraph (g)(5) of this AD.

(3) If any cracking is found in the corner fitting and area 3 has been cold expanded, before further flight, do the eddy current inspection of the longeron and outer skin specified in paragraph (g)(6) of this AD.

(B) If cracking is found and the radius of the rework is 20.0 mm (0.787 inch) or more, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the European Aviation Safety Agency (EASA) (or its delegated agent).

(ii) If cracking is greater than 2.0 mm (0.079 inch) long or there are more than 2 cracks; or if there are more than 2 cracks with less than a minimum distance of 50.0 mm (1.969 inch) between the cracks: Before further flight, remove the corner fitting, and do the applicable actions specified in paragraph (g)(3)(ii)(A) or (g)(3)(ii)(B) of this AD.

(A) If any cracking is found and area 3 has not been cold expanded, before further flight, install a new corner fitting, in accordance with the Accomplishment Instructions of the service bulletin; and do the rotating probe inspection in area 3 specified in paragraph (g)(5) of this AD.

(B) If any cracking is found and area 3 has been cold expanded, before further flight, do the eddy current inspection of the longeron and outer skin specified in paragraph (g)(6) of this AD.

(4) For area 2: Do an eddy current inspection for cracking of area 2, in accordance with the Accomplishment Instructions of the service bulletin. If any cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(5) For area 3: Do a rotating probe inspection for cracking of specified fastener holes in area 3, in accordance with the Accomplishment Instructions of the service bulletin.

(i) If no cracking is found, before further flight, drill or ream fastener holes, cold expand the fastener holes and countersinks, and wet install with sealant, in accordance with the Accomplishment Instructions of the service bulletin; except where the service bulletin specifies to contact Airbus if the fastener diameter does not meet specifications or if the distance between the hole center and material edge is less than specifications, before further flight, contact Airbus for repair instructions and do the repair.

(ii) If cracking is found, before further flight, drill or ream fastener holes, and do a rotating probe inspection for cracking of the fastener holes in accordance with the Accomplishment Instructions of the service bulletin.

(A) If no cracking is found, cold expand the fastener holes and countersinks, drill or ream fastener holes, and wet install with sealant, in accordance with the Accomplishment Instructions of the service bulletin; except where the service bulletin specifies to contact Airbus if the fastener diameter does not meet specifications or if the distance between the hole center and material edge is less than the specifications, before further flight, contact Airbus for repair instructions and do the repair.

(B) If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(6) For airplanes on which cracking is found in the corner fitting during any inspection required by paragraph (g)(3) of this AD and area 3 is cold-expanded: Do an eddy current inspection for cracking of the longeron and outer skin, in accordance with the Accomplishment Instructions of the service bulletin.

(i) If no cracking is found, before further flight, install a new corner fitting and do a rotating probe inspection for cracking of the fastener holes, in accordance with the Accomplishment Instructions of the service bulletin.

(A) If no cracking is found, before further flight, drill or ream fastener holes, cold expand the fastener holes and countersinks, and wet install with sealant, in accordance with the Accomplishment Instructions of the service bulletin.

(B) If cracking is found and the hole diameter is less than the maximum oversize specification, before further flight, drill or ream holes and do a rotating probe inspection for cracking of the fastener holes, in accordance with the service bulletin.

(1) If no cracking is found, cold expand the fastener holes and countersinks, and wet install with sealant, in accordance with the Accomplishment Instructions of the service bulletin.

(2) If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(C) If cracking is found and the hole diameter is equal to or greater than the maximum oversize specification, before further flight, contact Airbus for repair instructions and do the repair.

(ii) If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

Repetitive Inspections of the Lower Tail Plane Cut-Out Area

(h) Repeat the inspections for area 1 required by paragraphs (g)(1) and (g)(3) of this AD thereafter at the applicable intervals specified in Table 2 of this AD. Certain compliance times are applicable to short-range use (AFT equal to or less than 4 flight hours), or long-range use (AFT exceeding 4 flight hours). Inspection areas are specified in the service bulletin.

TABLE 2—REPETITIVE INTERVAL FOR AREAS 1 AND 2

Affected airplanes	Interval (not to exceed)
(1) Model A310–203, A310–204, and A310–222 airplanes that have accumulated less than 30,000 total flight cycles and 60,000 total flight hours, as of the effective date of this AD.	6,000 flight cycles or 12,000 flight hours, whichever occurs first, until the airplane accumulates 30,000 total flight cycles or 60,000 total flight hours; then perform the inspections within the interval specified in paragraph (h)(2) of this AD.
(2) Model A310–203, A310–204, and A310–222 airplanes that have accumulated 30,000 total flight cycles or more or 60,000 total flight hours or more, as of the effective date of this AD.	3,900 flight cycles or 7,800 flight hours, whichever occurs first.
(3) Model A310–304, A310–322 and A310–324 short range airplanes that have accumulated less than 24,000 total flight cycles and 67,500 total flight hours, as of the effective date of this AD.	4,800 flight cycles or 13,500 flight hours, whichever occurs first, until the airplane accumulates 24,000 total flight cycles or 67,500 total flight hours; then perform the inspections within the interval specified in paragraph (h)(4) of this AD.
(4) Model A310–304, A310–322 and A310–324 short range airplanes that have accumulated 24,000 total flight cycles or more or 67,500 total flight hours or more, as of the effective date of this AD.	3,100 flight cycles or 8,750 flight hours, whichever occurs first.
(5) Model A310–304, A310–322 and A310–324 long range airplanes that have accumulated less than 15,000 total flight cycles and 75,000 total flight hours, as of the effective date of this AD.	3,000 flight cycles or 15,000 flight hours, whichever occurs first, until the airplane accumulates 15,000 total flight cycles or 75,000 total flight hours; then perform the inspections within the interval specified in paragraph (h)(6) of this AD.
(6) Model A310–304, A310–322 and A310–324 long range airplanes that have accumulated 15,000 total flight cycles or more or 75,000 total flight hours or more, as of the effective date of this AD.	1,950 flight cycles or 9,750 flight hours, whichever occurs first.

(i) Repeat the inspections for area 2 required by paragraphs (g)(1) and (g)(4) of this AD thereafter at the applicable intervals specified in Table 2 of this AD. Certain compliance times are applicable to short-range use (AFT equal to or less than 4 flight hours), or long-range use (AFT exceeding 4 flight hours). Inspection areas are specified in the service bulletin.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Inspections accomplished before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A310–53–

2074, Revision 03, dated October 13, 2006, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: The MCAI and service information do not specify a corrective action if cracking is found and the radius of the rework is 20.0 mm (0.787 inch) or more. Paragraph (g)(3)(i)(B) of this AD requires repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Other FAA AD Provisions

(k) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2009–0058, dated March 13, 2009; and Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008; for related information.

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32991 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1274; Directorate Identifier 2010–NM–090–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) * * * was issued to require a set of inspection and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure. * * *

* * * * *

The unsafe condition is reduced structural integrity of the wings. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 17, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1274; Directorate Identifier 2010–NM–090–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0057, dated March 13, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) original

issue up to revision 7 was issued to require a set of inspection and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

Following the Extended Design Service Goal activities as part of the Structure Task Group for the Airbus A310 program, EASA published AD 2007–0053, which replaced DGAC France AD F–1992–106–132R7.

Since the issuance of AD 2007–0053R1, the thresholds and the intervals of Airbus Service Bulletins (SB) A310–57–2050 and A310–57–2064 have been updated.

Consequently, this new [EASA] AD takes over the requirements of paragraphs 1.15 and 1.17 of EASA AD 2007–0053R1, which has been revised accordingly * * * and requires the accomplishment of Airbus SB A310–57–2048 at revision 01.

The unsafe condition is reduced structural integrity of the wings. The required actions are as follows, depending on airplane configuration:

- Cold working of trellis boom drainage holes.
- Repetitive detailed or rotating probe inspections for cracking in the drain holes on the lower skin panel in the center wing box between frames 42 and 46 and corrective actions if necessary. Corrective actions include repairing cracking and contacting the FAA or EASA for repair and doing the repair.
- Repetitive eddy current inspections for cracking of the upper corner angle fitting and the vertical tee fitting at left and right frame 40, and corrective actions if necessary. Corrective actions include repairing, replacing the internal angle fitting and contacting the FAA or EASA for repair and doing the repair.

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

Other Relevant Rulemaking

We are considering issuing three other NPRMs related to this NPRM:

- Directorate Identifier 2010–NM–092–AD. That NPRM proposes to supersede AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998), to continue to require certain actions specified in that AD. However, that NPRM does not restate paragraphs (p) and (r) of AD 98–26–01. Instead, certain requirements of paragraphs (p) and (r) of that AD are included in this NPRM, Directorate Identifier 2010–NM–090–AD.
- Directorate Identifiers 2010–NM–089–AD and 2010–NM–091–AD. Both of these NPRMs include the requirements of certain other paragraphs of AD 98–26–01.

Relevant Service Information

Airbus has issued the service bulletins listed in the table that follows:

TABLE—SERVICE INFORMATION

Service bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2048	01	May 22, 2007.
Airbus Mandatory Service Bulletin A310–57–2050, including Appendix 01	02	August 27, 2009.
Airbus Mandatory Service Bulletin A310–57–2064, including Appendix 1	02	December 21, 2007.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 44 products of U.S. registry. We also estimate that it would take about 137 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $512,380, or $11,645 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–1274; Directorate Identifier 2010–NM–090–AD.

Comments Due Date

(a) We must receive comments by February 17, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) original issue up to revision 7 was issued to require a set of inspection and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure. * * *.

* * * * *

The unsafe condition is reduced structural integrity of the wings.

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.

Cold Working of Trellis Boom Drainage Holes

(g) For Model A310–203, –204, –222, –304, –322 and –324 airplanes, except airplanes identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Within the applicable time specified in Table 1 of this AD, cold work the trellis boom drainage holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007. Certain compliance times specified in Table 1 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 3.6 hours; or long range use, AFT exceeding 3.6 hours.

TABLE 1—COMPLIANCE TIMES FOR PARAGRAPH (G) OF THIS AD

Airplanes, as identified in Airbus mandatory service bulletin A310–57–2048, revision 01, dated May 22, 2007	Compliance time (whichever occurs later)	
Configuration 01 airplanes	Prior to the accumulation of 31,800 total flight cycles or 63,600 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.
Configuration 02 airplanes	Prior to the accumulation of 40,000 total flight cycles or 80,000 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.
Configuration 03 short range airplanes	Prior to the accumulation of 30,950 total flight cycles or 86,750 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.
Configuration 03 long range airplanes	Prior to the accumulation of 24,100 total flight cycles or 120,600 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.

(1) Airplanes on which Airbus modification 06130 was done in production.

(2) Airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 was done in service.

(3) Airplanes on which rework of cracked drain holes was done in accordance with Airbus Mandatory Service Bulletin A310–57–2050.

Inspection of Trellis Boom Drainage Holes

(h) For all airplanes: Within the applicable intervals specified in Table 2 of this AD, perform a detailed or rotating probe inspection for cracking in the drain holes on the lower skin panel in the center wing box between frames 42 and 46, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009. Repeat the inspections thereafter at intervals not to exceed the applicable times specified in Table 3 of this AD. Certain compliance times specified in Tables 2 and 3 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 3.6 hours; or long range use, AFT exceeding 3.6 hours.

TABLE 2—COMPLIANCE TIMES FOR PARAGRAPH (H) OF THIS AD

Airplanes, as identified in Airbus mandatory service bulletin A310–57–2050, revision 02, dated August 27, 2009	Compliance time (whichever occurs later)	
Configuration 01 airplanes	Prior to the accumulation of 17,800 total flight cycles or 35,600 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 2—COMPLIANCE TIMES FOR PARAGRAPH (H) OF THIS AD—Continued

Airplanes, as identified in Airbus mandatory service bulletin A310–57–2050, revision 02, dated August 27, 2009	Compliance time (whichever occurs later)	
Configuration 02 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 32,850 flight cycles or 65,700 flight hours, whichever occurs first, after accomplishing Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 02 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 8,600 flight cycles or 17,250 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 11,400 flight cycles or 22,800 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 03 airplanes	Prior to the accumulation of 22,300 total flight cycles or 44,550 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 04 airplanes	Prior to the accumulation of 41,550 total flight cycles or 83,100 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 05 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Prior to the accumulation of 40,000 total flight cycles or 80,000 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 05 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 10,600 flight cycles or 21,150 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 13,900 flight cycles or 27,800 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 06 short range airplanes	Prior to the accumulation of 17,250 total flight cycles or 48,400 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 06 long range airplanes	Prior to the accumulation of 13,450 total flight cycles or 67,250 total flight hours, whichever occurs first.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 07 short range airplanes	Prior to the accumulation of 32,150 total flight cycles or 90,050 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 07 long range airplanes	Prior to the accumulation of 25,050 total flight cycles or 125,150 total flight hours, whichever occurs first.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 short range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Prior to the accumulation of 30,950 total flight cycles or 86,750 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 2—COMPLIANCE TIMES FOR PARAGRAPH (H) OF THIS AD—Continued

Airplanes, as identified in Airbus mandatory service bulletin A310–57–2050, revision 02, dated August 27, 2009	Compliance time (whichever occurs later)	
Configuration 08 short range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 8,200 flight cycles or 23,000 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 10,800 flight cycles or 30,300 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 long range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Prior to the accumulation of 24,100 total flight cycles or 120,600 total flight hours, whichever occurs first.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 long range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 6,400 flight cycles or 31,950 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 8,400 flight cycles or 42,150 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 3—REPETITIVE INTERVALS FOR PARAGRAPH (H) OF THIS AD, DEPENDING ON MOST RECENT INSPECTION TYPE

Airplanes, as identified in Airbus mandatory service bulletin A310–57–2050, revision 02, dated August 27, 2009	Type of inspection done during most recent inspection	Repetitive interval (not to exceed)
Configuration 01 and 02 airplanes	Detailed inspection	8,600 flight cycles or 17,250 flight hours, whichever occurs first.
	Rotating probe inspection	11,400 flight cycles or 22,800 flight hours, whichever occurs first.
Configurations 03, 04, and 05 airplanes	Detailed inspection	10,600 flight cycles or 21,150 flight hours, whichever occurs first.
	Rotating probe inspection	13,900 flight cycles or 27,800 flight hours, whichever occurs first.
Configurations 06, 07, and 08 short range airplanes.	Detailed inspection	8,200 flight cycles or 23,000 flight hours, whichever occurs first.
	Rotating probe inspection	10,800 flight cycles or 30,300 flight hours, whichever occurs first.
Configurations 06, 07, and 08 long range airplanes.	Detailed inspection	6,400 flight cycles or 31,950 flight hours, whichever occurs first.
	Rotating probe inspection	8,400 flight cycles or 42,150 flight hours, whichever occurs first.

Corrective Actions for Paragraph (h) of This AD

(i) If any cracking is found during any inspection required by paragraph (h) of this AD, before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009; except where the service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Inspection of Fuselage Frame 40 Upper Corner Fitting

(j) For all airplanes: Within the applicable time specified in Table 4 of this AD, perform an eddy current inspection for cracking of the upper corner fitting at left and right frame 40, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2064, Revision 02, dated December 21, 2007. Repeat the inspections thereafter at intervals not to exceed the applicable times specified in Table 5 of this AD. Certain compliance times specified in Tables 4 and 5 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 3.23 hours; or long range use, AFT exceeding 3.23 hours.

TABLE 4—COMPLIANCE TIMES FOR PARAGRAPH (J) OF THIS AD

Airplane configurations identified in Airbus mandatory service bulletin A310–57–2064, revision 02, dated December 21, 2007	Compliance time (whichever occurs later)	
Model A310–203, –204, –221, and –222 airplanes identified as Configuration 01.	Prior to the accumulation of 15,100 total flight cycles or 30,300 total flight hours, whichever occurs first.	Within 1,300 flight cycles or 2,700 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–203, –204, –221, and –222 airplanes identified as Configurations 02 and 03.	Prior to the accumulation of 21,400 total flight cycles or 42,800 total flight hours, whichever occurs first.	Within 1,300 flight cycles or 2,700 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 short range airplanes identified as Configuration 01.	Prior to the accumulation of 14,700 total flight cycles or 41,300 total flight hours, whichever occurs first.	Within 600 flight cycles or 1,800 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 short range airplanes identified as Configurations 02 and 03.	Prior to the accumulation of 20,700 total flight cycles or 58,300 total flight hours, whichever occurs first.	Within 600 flight cycles or 1,800 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 long range airplanes identified as Configuration 01.	Prior to the accumulation of 12,800 total flight cycles or 64,000 total flight hours, whichever occurs first.	Within 500 flight cycles or 2,650 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 long range airplanes identified as Configurations 02 and 03.	Prior to the accumulation of 18,000 total flight cycles or 90,400 total flight hours, whichever occurs first.	Within 500 flight cycles or 2,650 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 5—REPETITIVE INTERVALS FOR PARAGRAPH (J) OF THIS AD

Airplanes	Repetitive interval (not to exceed)
Model A310–203, –204, –221, and –222 airplanes	8,750 flight cycles or 17,550 flight hours, whichever occurs first.
Model A310–304, –322, –324, and –325 short range airplanes	5,800 flight cycles or 16,300 flight hours, whichever occurs first.
Model A310–304, –322, –324, and –325 long range airplanes	4,800 flight cycles or 24,050 flight hours, whichever occurs first.

Corrective Actions for Paragraph (h) of This AD

(k) If, during any inspection required by paragraph (j) of this AD, any crack is found, prior to further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2064, Revision 02, dated December 21, 2007; except where the service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2048, dated April 23, 1990, are considered acceptable for compliance with the corresponding action specified in paragraph (g) of this AD.

(m) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2050, dated April 23, 1990; or Airbus Mandatory Service Bulletin A310–57–2050, Revision 01, dated May 22, 2007; are considered acceptable for compliance with the corresponding actions specified in paragraphs (h) and (i) of this AD.

(n) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2064, dated August 24, 1995; or Revision 01, dated January 5, 2001; are acceptable for compliance with the corresponding actions specified in paragraphs (j) and (k) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

(o) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(p) Refer to MCAI EASA Airworthiness Directive 2009–0057, dated March 13, 2009, and the service bulletins listed in Table 6 of this AD, for related information.

TABLE 6—SERVICE INFORMATION

Service bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2048	01	May 22, 2007.
Airbus Mandatory Service Bulletin A31–57–2050	02	August 27, 2009.

TABLE 6—SERVICE INFORMATION—Continued

Service bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2064	02	December 21, 2007.

Issued in Renton, Washington on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32992 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0183]

32 CFR Part 311

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 15 DoD, entitled "Armed Services Military Accession Testing" when the record includes the specific answers submitted and the answer key. Releasing this information to the individual will compromise the objectivity or fairness of the test if the correct or incorrect answers are released.

DATES: Comments must be received on or before March 4, 2011 to be considered by this agency.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is proposed to be amended to read as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

2. Section 311.8 is amended by adding paragraph (c)(16) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(16) System identifier and name: DMDC 15 DoD, Armed Services Military Accession Testing.

(i) *Exemption:* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service or military service may be exempt pursuant to 5 U.S.C. 552a (k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

(ii)

Authority: 5 U.S.C. 552a(k)(6).

(iii) *Reasons:* (A) An exemption is required for those portions of the Skill Qualification Test system pertaining to individual item responses and scoring keys to preclude compromise of the test and to ensure fairness and objectivity of the evaluation system.

(B) From subsection (d)(1) when access to those portions of the Skill Qualification Test records would reveal the individual item responses and

scoring keys. Disclosure of the individual item responses and scoring keys will compromise the objectivity and fairness of the test as well as the validity of future tests resulting in the Department being unable to use the testing battery as an individual assessment tool.

Dated: December 21, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–33030 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD89

Special Regulation: Areas of the National Park System, National Capital Region

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to amend the regulations on demonstrations and special events for the National Capital Region. This proposed rule would revise the definition of "demonstration" as well as specify the conditions under which solicitation of gifts, money, goods, or services could occur.

DATES: Comments must be received by March 4, 2011.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD89, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

—*Mail or hand delivery:* National Park Service, Regional Director, Division of Park Programs, 1100 Ohio Drive, SW., Room 128, Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: Robbin Owen, Chief, Division of Park Programs, National Park Service, National Capital Region, 1100 Ohio Drive, SW., Room 128, Washington, DC 20242. Telephone: (202) 619–7225. Fax: (202) 401–2430.

SUPPLEMENTARY INFORMATION:

Background

Revise the Definition of "Demonstration"

This proposed rule would revise the definition of demonstration at 36 CFR 7.96 (g)(1)(i) by eliminating the term "intent or propensity" where it appears in the definition and replace it with the term "reasonably likely." In *Boardley* v. *Department of the Interior,* 605 F. Supp. 2d 8 (D.D.C. 2009) the United States District Court for the District of Columbia commented on the demonstration definition for the National Capital Region under 36 CFR 7.96 (g)(1)(i). The Court commented the definition could raise problems, because it allowed NPS officials to restrict speech based on their determination that a person intended to draw a crowd with their conduct. Such a determination could easily rest on impermissible grounds, such as an official's perception that certain expression is controversial or inappropriate, which would be a content-based decision, impermissible under the First Amendment. While the NPS has not applied the regulation in such an impermissible manner, and has since issued a clarifying memorandum to preclude such a determination, this proposed rule would revise the definition of demonstration to minimize any possibility of a decision based on impermissible grounds.

Amendment of the Solicitation Regulation

This proposed rule also would amend the provision regarding soliciting, in order to be consistent with the United States Court of Appeals for the District of Columbia decision in *ISKCON of Potomac* v. *Kennedy,* 61 F.3d 949 (DC Cir. 1995).

In *ISKCON of Potomac,* the Court of Appeals held that the NPS's regulatory ban of soliciting, which the NPS traditionally construed as applying only to the in-person solicitation of immediate donations, was not "narrowly tailored." The Court recognized that:

> * * *[t]he conduct of a special event within a small, well-defined permit area will have some effect on the ambiance of the Mall. But we cannot see how allowing in-person solicitations within the permit area will add to whatever adverse impact will result from the special event itself. The effects of solicitation will be confined to the permit area, and those who wish to escape them may simply steer clear of the authorized demonstration or special event. 61 F.3d at 956.

The Court also said:

> Our holding allows only those individuals or groups participating in an authorized demonstration or special event to solicit donations within the confines of a restricted permit area such as that assigned to ISKCON. It does not require the NPS to let rampant panhandling go unchecked. 61 F.3d at 956.

Following the *ISKCON of Potomac* decision, as an interim measure, the NPS posted a notice at its Washington, DC, National Capital Region Division of Park Programs permit office as well as in the Superintendent's Compendium of regulations for the National Mall and Memorial Parks, stating that soliciting would be allowed if it occurred within the confines of a permit area as part of a permitted ongoing activity. The soliciting regulation itself, however, also must be amended.

Consistent with *ISKCON of Potomac,* this proposed amendment would allow individuals or groups who are participating in a permitted demonstration or special event to solicit donations within the confines of a restricted permit area. Such soliciting is authorized only when provided for in a permit. Groups seeking to solicit donations as part of a demonstration or special event will need to describe the activities in their permit application.

This proposed rule also formalizes the long-standing view that soliciting is limited to the in-person soliciting of immediate donations.

This proposed rule deals with soliciting and not sales. Any attempt to offer or sell items, whether directly or by the use of deceit, is governed by the NPS sales regulation, at 36 CFR 7.96 (k), which limits items to be sold on park lands to books, newspapers, leaflets, pamphlets, buttons, and bumper stickers. As the NPS explained it its prefatory statement to its sales regulation, at 60 FR 17648 (1995),

> * * * restricted merchandise cannot be "given away" and a "donation accepted" or one item "given away" in return for the purchase of another item; such transactions amount to sales.

Finally, it has been the NPS's long-standing application of its regulations that demonstrations and special events, whether under permit or not, are not allowed in the restricted areas at 36 CFR 7.96 (g)(3)(ii). To better ensure that everyone fully understands that demonstrations and special events, with or without a permit, are not allowed in these restricted areas, NPS proposes to amend its introductory sentence to clearly indicate that no demonstrations or special events are allowed in the designated restricted areas.

Compliance with Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget, (OMB), has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material

way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule only effects management and operations of National Park Service areas within the National Capital Region.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. The rule modifies existing NPS regulations to be consistent with recent Federal Court decisions.

Regulatory Flexibility Act (RFA)

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

The rule expands opportunities for individuals and organizations to solicit funds, goods or services associated with a special event for which a permit has been issued. Other organizations with interest in the rule will not be effected economically.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

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

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. It pertains specifically to operation and management of locations within the NPS–National Capital Region. A takings implication assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian Tribes. The rule only applies to management and operation of NPS areas within the National Capital Region.

Paperwork Reduction Act (PRA)

The Office of Management and Budget has approved the information collections in this rule and has assigned control number 1024–0021, expiring on November 30, 2013. We estimate the burden associated with this information collection to be ¾ hour. The information collection activities are necessary for the public to obtain benefits in the form of special park use permits.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion. We have determined that the proposed rule is categorically excluded under 516 DM 12.5 A (10) insofar as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it. Further, the rule will not result in the introduction of incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it. Finally, the rule will not cause conflict with adjacent ownerships or land uses, or cause a nuisance to adjacent owners or occupants.

We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Information Quality Act (IQA)

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (Executive Order 13211)

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

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Public Participation

All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or

comments received, go to *http://www.regulations.gov* and enter "1024–AD89" in the "Keyword or ID" search box.

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.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201.07 (2001).

2. In § 7.96:

A. Revise paragraph (g)(1)(i);

B. Revise paragraph (g)(3)(ii) introductory text;

C. Revise paragraph (g)(3)(ii)(D);

D. Add paragraph (g)(3)(ii)(E);

E. Remove maps following paragraph (g)(7); and

F. Revise paragraph (h).

The revisions and addition read as follows:

§ 7.96 National Capital Region.

* * * * *

(g) *Demonstrations and special events*—(1) *Definitions* (i) The term "demonstration" includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.

* * * * *

(3) * * *

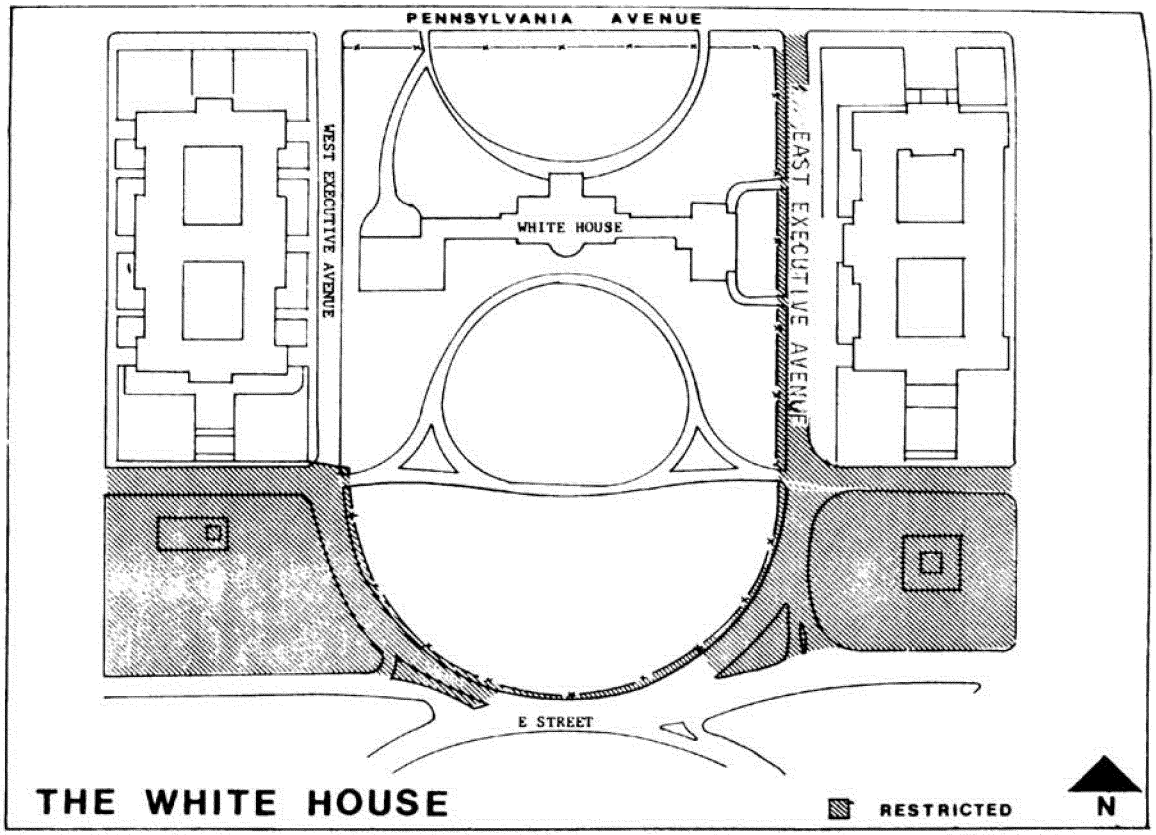
(ii) *Other park areas.* Demonstrations and special events are not allowed in the following other park areas:

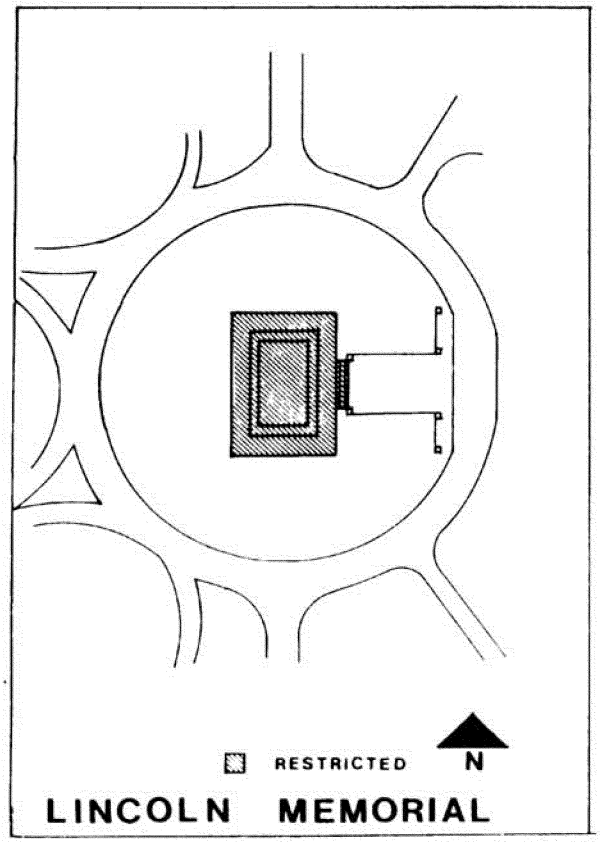
* * * * *

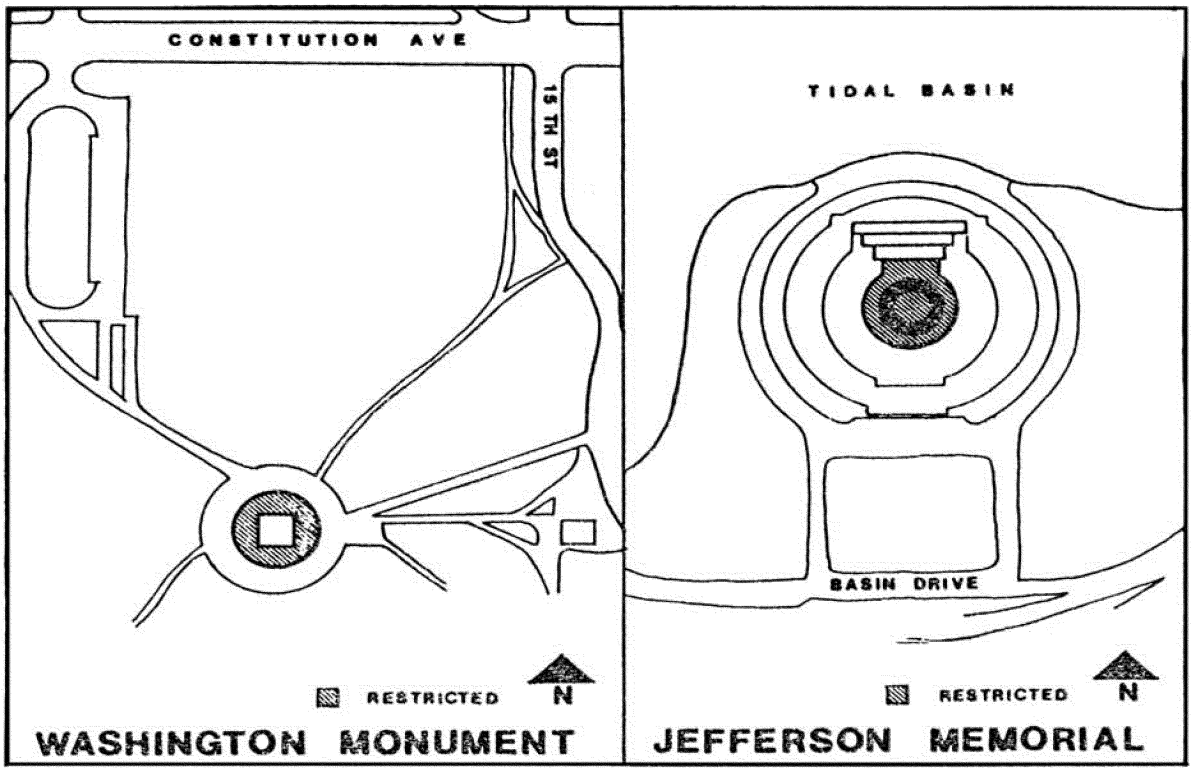
(D) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies.

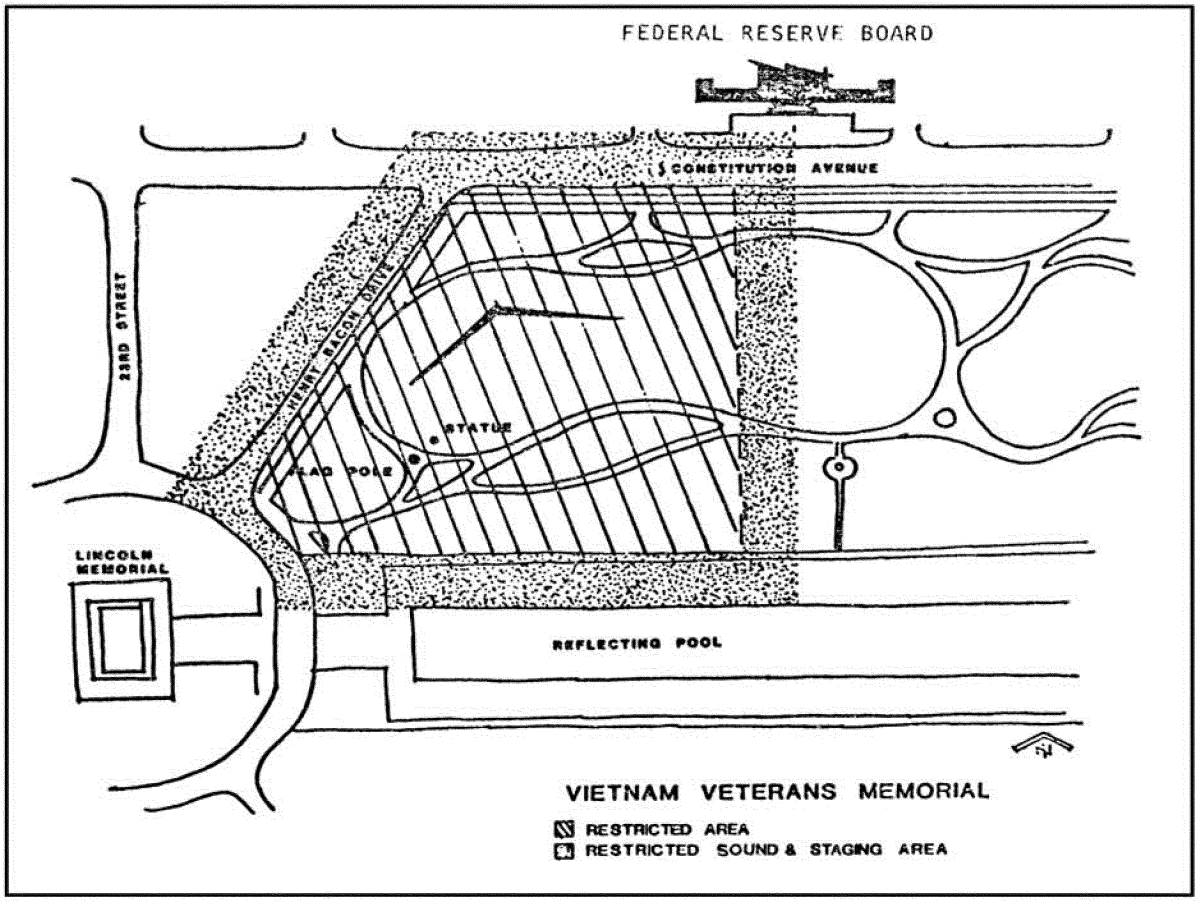
(E) Maps of the park areas designated in this paragraph are as follows. The darkened portions of the diagrams show the areas where demonstrations or special events are prohibited.

BILLING CODE 4312–52–P


PENNSYLVANIA AVENUE
WEST EXECUTIVE AVENUE
EAST EXECUTIVE AVENUE
WHITE HOUSE
E STREET
THE WHITE HOUSE
RESTRICTED
N


RESTRICTED
N
LINCOLN MEMORIAL





BILLING CODE 4312–52–C

* * * * *

(h) *Soliciting under permit.* (1) The in-person soliciting or demanding gifts, money, goods or services is prohibited, unless it occurs as part of a permit issued for a demonstration or special event.

(2) Persons permitted to solicit must not:

(i) Give false or misleading information regarding their purposes or affiliations;

(ii) Give false or misleading information whether any item is available without donation.

* * * * *

Dated: December 22, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–33071 Filed 12–30–10; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–2

RIN 1250–ZA00

Interpretive Standards for Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices Under Executive Order 11246; Notice of Proposed Rescission

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rescission.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is proposing to rescind two guidance documents addressing compensation discrimination: Interpreting Nondiscrimination Requirements of Executive Order 11246 with respect to Systemic Compensation Discrimination (Standards) and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Executive Order 11246 with respect to Systemic Compensation Discrimination (Voluntary Guidelines). OFCCP is proposing to rescind the Standards which have limited OFCCP's ability to effectively investigate, analyze and identify compensation discrimination. In so doing, OFCCP will continue to adhere to the principles of Title VII of the Civil Rights Act of 1964, as amended (Title VII) in investigating compensation discrimination and will reinstitute flexibility in its use of investigative approaches and tools. OFCCP also proposes to establish procedures for investigating compensation discrimination through the traditional means of using its compliance manual, directives and other staff guidance. OFCCP is proposing to rescind the Voluntary Guidelines because they are largely unused by the Federal Government contracting community and have not been an effective enforcement strategy.

DATES: Comments must be received on or before March 4, 2011.

ADDRESSES: You may submit comments, identified by number 1250–ZNE, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1304 (for comments of 6 pages or fewer).
- *Mail:* Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room N3422, 200 Constitution Avenue, NW., Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0102 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available online at *http://www.regulations.gov* and for public inspection during normal business hours at Room C3325, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals needing assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rescission will be made available in the following formats: Large print; Braille; electronic file on computer disk; and audiotape. To schedule an appointment to review the comments and/or to obtain this Notice of Proposed Rescission in an alternate format, contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's OFCCP enforces Executive Order 11246 which requires Federal Government contractors and subcontractors to provide equal employment opportunity through affirmative action and nondiscrimination based on race, color, national origin, religion, or sex. Compensation discrimination is one form of discrimination prohibited by the Executive Order.

OFCCP enforces contractors' compliance with this obligation primarily by conducting compliance evaluations. (*See* 41 CFR 60–1.20.) OFCCP's longstanding policy is to follow Title VII principles when conducting analyses of potential discrimination under Executive Order 11246, including compensation discrimination. Compensation discrimination may occur on an individual basis, or systemically, that is, it is widespread in an organization due to discriminatory compensation systems. OFCCP traditionally has established procedures for investigating compensation discrimination, as well as other forms of discrimination, through instructions for its compliance officers contained in the OFCCP Federal Contract Compliance Manual (FCCM), directives and other staff guidance materials.

Identifying and remedying compensation discrimination has been an important part of OFCCP compliance efforts for many years. Concerns about compensation discrimination led OFCCP in Calendar Year (CY) 2000 to begin requiring contractors to submit compensation data requested in the scheduling letter at the outset of a compliance evaluation as a matter of course and as part of the data reported in a new Equal Opportunity Survey, which covered contractors were required to submit to OFCCP. (The Scheduling Letter was approved under the Paperwork Reduction Act OMB NO. 1215–0072; see 65 FR 68022, 68036 (November 13, 2000) for the notice regarding the Equal Opportunity Survey.) In CY 2000, OFCCP also began requiring contractors to proactively conduct in-depth analyses of their compensation systems to ensure that those systems were not discriminatory. (*See* 41 CFR 60–2.17(b)(3).)

OFCCP changed its approach to investigating compensation discrimination in 2006. On June 16, 2006, OFCCP published in the **Federal Register** two final guidance documents related to identifying compensation discrimination under Executive Order 11246 that contained interpretations of OFCCP regulations and Title VII principles: Interpreting Nondiscrimination Requirements of Executive Order 11246 with respect to Systemic Compensation Discrimination

(Standards) and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Executive Order 11246 with respect to Systemic Compensation Discrimination (Voluntary Guidelines). (*See* 71 FR 35124 (June 16, 2006) for the Standards and 71 FR 35114 (June 16, 2006) for the Voluntary Guidelines.) Further, OFCCP rescinded the Equal Opportunity Survey in 2006. (*See* 71 FR 53032 (September 8, 2006).)

The Standards set forth a new, rigid procedure for investigating and analyzing systemic compensation discrimination cases. Systemic compensation discrimination is defined as discrimination under a pattern or practice of disparate treatment. (*See* 71 FR at 35140.) The Standards prescribe procedures to be followed by OFCCP compliance officers when conducting investigations of systemic compensation discrimination in all cases, including how to group employees whose compensation is to be compared in a discrimination analysis, requiring anecdotal evidence of compensation discrimination except in unusual cases, and requiring the use of multiple regression analysis when deciding whether wage differences between groups are discriminatory. These procedures are to be followed regardless of the facts of a particular case. The rigidity of the Standards represents a significant departure from OFCCP's traditional tailoring of compensation investigation and analytical procedures to the facts of the case based on Title VII principles. Investigations of systemic compensation discrimination are complex and nuanced. During the conduct of compliance evaluations, OFCCP has traditionally focused on identifying compensation discrimination through the development of a variety of investigative and analytical tools. The use of a particular tool, or combination of tools, depends upon the facts of a specific case, and includes consulting with labor economists and other experts, as appropriate.

The Standards also significantly limit OFCCP's ability to identify compensation discrimination by imposing overly narrow investigation procedures that go beyond what would be required under Title VII principles in litigation. For example, the Standards state that, except in unusual cases, OFCCP will not issue a notice of violation (NOV) without providing anecdotal evidence to support OFCCP's statistical analysis. But under Title VII, a pattern or practice class-wide disparate treatment case may be proven by statistics. *See, e.g., Int'l Brotherhood of Teamsters* v. *United States,* 431 U.S. 324, 339–40 (1977); *Palmer* v. *Shultz,* 815 F.2d 84, 90–91 (DC Cir. 1987). *Cf. OFCCP* v. *Greenwood Mills, Inc.,* No. 89–OFC–39, Decision and Order of Remand, slip op. at 14 (Sec'y of Labor Nov. 20, 1995); *OFCCP* v. *Jacksonville Shipyards,* 89–OFC–1, Decision and Remand Order, slip op. at 5 (Sec'y of Labor May 9, 1995). Moreover, requiring anecdotal evidence is particularly problematic in compensation cases as employees often are unaware of the compensation received by co-workers and, as a result, anecdotal evidence from victims of pay discrimination may not exist.

The Standard's mandate to use a multiple regression analysis to identify compensation discrimination is also overly narrow and is not required under Title VII principles. While a multiple regression analysis may be a useful tool in identifying compensation discrimination, other statistical or nonstatistical analyses may be better suited, depending on the facts of the case.

In short, we now believe the Standards significantly undermine OFCCP's ability to vigorously investigate and identify compensation discrimination.

The Voluntary Guidelines establish procedures that contractors can elect to use in conducting the self-analysis of their pay practices required by 41 CFR 60–2.17(b)(3). As an incentive to encourage contractors to use the analytical procedures contained in the Voluntary Guidelines, OFCCP would deem a contractor, whose self-evaluation "reasonably meets" the procedures outlined in the Voluntary Guidelines, to be in compliance with section 60–2.17(b)(3) and would coordinate OFCCP's review of the contractor's compensation practices during a compliance evaluation in the manner specified in the Voluntary Guidelines. (*See* 71 FR at 35122.) In OFCCP's experience since 2006, contractors have rarely utilized the analytical procedures outlined in the Voluntary Guidelines when analyzing their compensation practices under section 60–2.17(b)(3).

Additionally, the analytical model set forth in the Voluntary Guidelines suffers from many of the same flaws as the investigative procedures prescribed by the Standards. For example, the Voluntary Guidelines established certain rigid numerical thresholds by which the similarly situated employee groupings are to be analyzed. OFCCP believes that for some contractors, these thresholds may be exceedingly difficult to meet.

II. Proposal

OFCCP proposes to rescind the Standards and the Voluntary Guidelines in their entirety. OFCCP believes it is unnecessary to issue new **Federal Register** notices articulating its interpretations of Title VII principles related to compensation discrimination. OFCCP will continue to follow Title VII principles in investigating and analyzing compensation discrimination and in interpreting regulations related to compensation discrimination. The agency is proposing to normalize its treatment of those cases with other types of OFCCP discrimination investigations. Once rescinded, nothing in the Standards or the Voluntary Guidelines or their preambles could be relied upon as a statement of OFCCP's interpretation of Title VII principles or OFCCP regulations.

If the Standards are rescinded, OFCCP will reinstitute the practice of exercising its discretion to develop compensation discrimination investigation procedures in the same manner it develops other investigation procedures. OFCCP will continually refine those procedures to ensure that they are as effective and efficient as possible. OFCCP will develop and issue compensation investigation procedures in the same manner as procedures for investigating other forms of discrimination, for example through the FCCM, directives and staff guidance materials.

As mentioned above, OFCCP has found that contractors rarely use the analytical procedure suggested in the Voluntary Guidelines for conducting the compensation analyses required by section 60–2.17(b)(3). In the few instances when contractors have conducted their compensation analysis in the manner suggested in the Voluntary Guidelines, the coordination procedures of the Voluntary Guidelines have not proved to be an efficient method for verifying that the contractor's compensation system is not discriminatory. The agency has concluded that the Voluntary Guidelines have not proved to be either an effective vehicle for providing guidance about how to conduct the analyses required by section 60–2.17(b)(3) or an effective incentive for contractors to conduct the analysis in the manner described in the Voluntary Guidelines.

In the absence of the Voluntary Guidelines, contractors will still be obligated to conduct self-evaluations of compensation practices as required by 41 CFR 60–2.17(b)(3). OFCCP will continue to provide any needed compliance assistance on section 60–

2.17(b)(3) through various means, including webinars and the Web site distribution of Frequently Asked Questions as appropriate, rather than through the issuance of a **Federal Register** notice.

OFCCP invites any interested party to comment on the proposal to rescind the Standards and the Voluntary Guidelines.

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

[FR Doc. 2010–32602 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–45–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[Docket No. FRA–2009–0042]

RIN 2130–AC13

Safety and Health Requirements Related to Camp Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: To carry out a 2008 Congressional rulemaking mandate, FRA is proposing to create regulations prescribing minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees and individuals employed to maintain its right of way. The proposed regulations would supplant existing guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, and sanitary, and afford those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the railroad. In further response to the rulemaking mandate, the proposed regulations would include the additional statutory requirements, enacted in 2008, that camp cars be provided with indoor toilets, potable water, and other features to protect the health of such workers.

Under separate but related statutory authority, FRA is proposing to amend regulations on construction of employee sleeping quarters. In particular, FRA proposes to implement a 2008 statutory amendment that, on and after December 31, 2009, camp cars provided by a railroad as sleeping quarters exclusively for individuals employed to maintain the right of way of a railroad are within the scope of the prohibition against beginning construction or reconstruction of employee sleeping quarters near railroad switching or humping of hazardous material. FRA's existing guidelines with respect to the location, in relation to switching or humping of hazardous material, of a camp car that is occupied exclusively by individuals employed to maintain a railroad's right of way would be replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, FRA would make conforming changes, clarify a provision on applicability, remove an existing provision on preemptive effect as unnecessary, and move, without change, an existing provision on penalties for violation of FRA regulations.

DATES: (1) Written comments must be received by March 4, 2011. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA anticipates being able to resolve this rulemaking without a public hearing. However, if FRA receives a specific request for a public hearing prior to March 4, 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, which should be identified by Docket No. FRA–2009–0042, may be submitted by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please *see* the Privacy Act section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Misiaszek, Certified Industrial Hygienist, Staff Director, Industrial Hygiene Division, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6002), *alan.misiaszek@dot.gov* or Ann M. Landis, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6064), *ann.landis@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory, Regulatory, and Factual Background

This proposal is being issued primarily to help satisfy the requirements of section 420 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Div. A, 122 Stat. 4848, October 16, 2008 (amending a provision of the hours of service laws at 49 U.S.C. 21106). RSIA requires the Secretary of Transportation (Secretary) to adopt regulations no later than April 1, 2010 establishing minimum standards for "employee sleeping quarters" in the form of "camp cars" that are provided by railroads. 49 U.S.C. 21106(a)(1), (c). Specifically, RSIA instructs the Secretary to prescribe regulations "to implement [49 U.S.C. 21106(a)(1)] to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that use camp cars. * * * " 49 U.S.C. 21106(c). The statutory term "employee" is defined in 49 U.S.C. 21101(3) to include a train employee, a signal employee, and a dispatching service employee, who as a group are sometimes referred to as "covered service employees." As amended through 2008, 49 U.S.C. 21106(a)(1) provides that such camp cars must be—

clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by

noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees.

49 U.S.C. 21106(a)(1). RSIA requires the Secretary to conduct this rulemaking "in coordination with the Secretary of Labor," and to "assess the action taken by any railroad carrier to fully retrofit or replace its camp cars. * * * " 49 U.S.C. 21106(c).

FRA has longstanding regulations implementing the statutory provision that prohibits railroads, effective July 8, 1976, from beginning the construction or reconstruction of railroad-provided sleeping quarters for train employees, signal employees, and dispatching service employees in an area or in the immediate vicinity of an area where railroad switching or humping of hazardous material occurs. Currently, these regulations affecting the location of sleeping quarters for covered service employees do not apply to sleeping quarters exclusively for individuals employed to maintain the right of way of a railroad.

RSIA directly requires that railroads using camp cars must "fully retrofit or replace such cars in compliance with [49 U.S.C. 20106(a)]" by December 31, 2009. 49 U.S.C. 21106(b). As will be further explained below, FRA interprets 49 U.S.C. 21106(b) as applying the prohibition in 49 U.S.C. 21106(a)(2) against beginning construction or reconstruction of employee sleeping quarters near switching or humping operations to camp cars provided by railroads as sleeping quarters for individuals employed to maintain the railroad right of way (MOW workers) and setting a compliance date of December 31, 2009, with respect to such camp cars exclusively for MOW workers.

The Secretary has delegated the responsibility to carry out his responsibilities under RSIA to the Administrator of FRA. 74 FR 26981, 26982, June 5, 2009, codified at 49 CFR 1.49(oo). *See also* 49 CFR 1.49(d), delegating the Secretary's authority to carry out the hours of service laws to the Administrator of FRA, and 49 U.S.C. 103.

Proposed subpart E is based extensively on FRA guidelines already in place, which, in turn, were based on the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") standards for sanitation and temporary labor camps at 29 CFR 1910.141 and 1910.142, modified as appropriate for the railroad environment. *See* FRA's Guidelines for Clean, Safe, and Sanitary Railroad Provided Camp Cars (1990 Guidelines), 55 FR 30892, July 27, 1990, codified at 49 CFR part 228, app. C.

In addition, FRA has consulted with officials of the only railroad currently known to be utilizing camp cars as sleeping quarters, Norfolk Southern Railway Company (NS), to determine what actions it has taken to conform to the statutory requirements that the cars be not only clean, safe, and sanitary and provide an opportunity for rest uninterrupted by noise under the control of the railroad, but also have "indoor toilet facilities, potable water, and other features to protect the health" of employees and MOW workers and not be placed in the immediate vicinity of certain "switching or humping operations" as defined in FRA regulations at 49 CFR 228.101(c)(3). NS has assured FRA that all of its camp cars comply with statutory requirements, but its interpretation asserts that camp cars exclusively occupied by MOW workers are not subject to 49 U.S.C. 21106(a)(2).

MOW workers have been given protection by limits of how close their sleeping quarters are to switching and hump operations. That protection formerly only applied to train employees, signal employees, and dispatching employees. In 1976, Congress required that all sleeping quarters, "including crew quarters, camp or bunk cars, and trailers," provided by a railroad to its "employees" be "clean, safe, and sanitary" and provide an opportunity for rest without interruptions caused by noise under the control of the railroad. Public Law 94–348, sec. 4, adding subsection (a)(3) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(3) (1976) and now codified as amended at 49 U.S.C. 21106(a)(1).[1] Again, the term "employees" included only those who, in the terminology of the present statute, are called "train employees," "signal employees," or "dispatching service employees," and did not include MOW workers. In the same legislation, Congress prohibited railroads from beginning, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for "employees" "within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area where railroad switching or humping operations are performed." Public Law 94–348, sec. 4, adding subsection (a)(4) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(4) (1976) and now codified as amended at 49 U.S.C. 21106(a)(2).

To carry out the 1976 statutory amendment at section 2(a)(3) of the Hours of Service Act, on July 18, 1978, FRA published interpretative guidance and a statement of policy regarding the provision requiring "clean, safe, and sanitary" sleeping quarters for employees free from railroad-controlled noise that would interrupt rest. Amendment to appendix A to 49 CFR part 228, 43 FR 30803, July 18, 1978.

To carry out the 1976 amendment at section 2(a)(4) of the Hours of Service Act, on July 19, 1978, FRA published regulations codified at 49 CFR part 228, subpart C (subpart C). 43 FR 31012. As stated in the preamble to those regulations,

> [t]he primary impetus of this amendment to the Hours of Service Act was the accident that occurred at Decatur, Illinois, on July 19, 1974. (H.R. Report No. 94–1166 (1976) at page 11.) Seven employees were killed and another 33 were injured when an explosion demolished crew quarters that were located between and adjacent to two classification yards and did other extensive damage in the middle of the Norfolk and Western yard. Three hundred sixteen persons who lived or worked in the surrounding area were also injured. The explosion resulted from accidental release of product which occurred during the switching of hazardous materials.
> * * *
> In enacting the 1976 amendment to the law, Congress determined that additional protection from accidents such as the one that occurred at Decatur, Illinois, is required for crew quarters.

43 FR 31009.

Subpart C defines key terms in section 2(a)(4) of the Hours of Service Act, permits railroads to request a determination by FRA that a particular proposed site is not within the "immediate vicinity," and states the criteria by which FRA will make the determination. *See* 49 CFR 228.101(a). FRA approval is necessary before a railroad may begin the "construction or reconstruction" of sleeping quarters for employees within the distance of switching or humping operations specified in the regulations. 49 CFR 228.101. The distance triggering the need for approval is one-half mile "as measured from the nearest rail of the nearest trackage where switching or humping operations are performed to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations." 49 CFR 228.101(b). "Switching or humping operations" is defined to include "the classification of placarded railroad cars according to commodity or destination, assembling

[1] In the 1994 recodification of Federal transportation laws, the Hours of Service Act was simultaneously repealed, reenacted as revised, and recodified as positive law primarily in 49 U.S.C. chapter 211. Public Law 103–272, July 5, 1994.

of placarded cars for train movements, * * * ." 49 CFR 228.101(c)(3). "Placarded car" is defined to mean "a railroad car required to be placarded by the Department of Transportation hazardous materials regulations (49 CFR 172.504)." 49 CFR 228.101(c)(4). "Construction" includes the "[p]lacement of a mobile or modular facility," which includes placement of a camp car. 49 CFR 228.101(c)(1)(iii). On or after July 8, 1976, any railroad placing a camp car occupied by an employee near switching or humping operations must obtain FRA approval before doing so. 49 CFR 228.101(a).

In 1988, Congress redefined "employee" for purpose of section 2(a)(3) of the Hours of Service Act (now codified at 49 U.S.C. 21106(a)(1)) so as to include MOW workers, thereby making all sleeping quarters provided by a railroad to MOW workers subject to the same statutory standard. Public Law 100–342, sec. 19(b). It should be noted, however, that the 1988 amendment did not make MOW workers "employees" for purposes of the "location" requirement at section 2(a)(4) of the Hours of Service Act. Consequently, a camp car occupied only by employees or by both employees and MOW workers is subject to subpart C, but a camp car occupied only by MOW workers is not subject to subpart C.

To carry out the 1988 statutory amendment, FRA issued an interpretation in 1990 of the terms "clean," "safe," and "sanitary" as applied to railroad-provided camp cars occupied by employees, MOW workers, or both based on standards established by OSHA. 49 CFR part 228, app. C. In FRA's 1990 Guidelines, the agency noted that—

> FRA believes that camp cars, either because of express limitations of local codes, or by virtue of their physical mobility, are generally not subject to state or local housing, sanitation, health, electrical or fire codes. Therefore, FRA is unable to rely upon state or local authorities to ensure that persons covered by the [Hours of Service] Act who reside in camp cars are afforded an opportunity for rest in 'clean,' 'safe,' and 'sanitary' conditions. Accordingly, FRA must determine what adverse conditions might reasonably be expected to interfere with the ordinary person's ability to rest, so as to enunciate policy guidelines to be applied by FRA in enforcing the words 'clean,' 'safe,' and 'sanitary' for purposes of the Act.

55 FR 30892, 30893, July 27, 1990.

Twenty years after the 1988 statutory amendment, Congress enacted section 420 of RSIA. Congress added requirements that all sleeping quarters provided by railroads to employees or MOW workers have "indoor toilets, potable water, and other features to protect the health of [employees and MOW workers] (amending 49 U.S.C. 21106(a)(1));" that any railroad that uses camp cars must "fully retrofit or replace" such cars to be in compliance with 49 U.S.C. 21106(a) by December 31, 2009 (*see* new 49 U.S.C. 21106(b)); and that the Secretary prescribe regulations to implement 49 U.S.C. 21106(a)(1), requiring compliance by December 31, 2010 (*see* new 49 U.S.C. 21106(c)).

FRA has considered whether Congress intended for railroad-provided camp cars occupied by MOW workers to be subject to the restrictions of 49 U.S.C. 21106(a)(2) on their location. Clearly, by the express text of 49 U.S.C. 21106(c), the regulations mandated by that subsection are intended "to implement subsection (a)(1)" (*i.e.,* 49 U.S.C. 21106(a)(1)), and not to implement both 49 U.S.C. 21106(a)(1) and 49 U.S.C. 21106(a)(2). Just as clearly, Congress did not amend 49 U.S.C. 21106(a)(2) itself, which bars beginning such construction or reconstruction of sleeping quarters for covered service employees on or after July 8, 1976; Congress did not, for example, add language to subsection (a)(2) to prohibit beginning construction or reconstruction of railroad-provided camp cars used as sleeping quarters for MOW workers, with a new effective date in subsection (a)(2) itself.

In the end, however, FRA concludes that Congress did intend such location restrictions in subsection (a)(2) to apply to camp cars exclusively occupied by MOW workers, based primarily on the language of subsection (b), which reads as follows:

> (b) Camp cars.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with *subsection (a).*

(Emphasis added). 49 U.S.C. 21106(b). Congress could have written that the camp cars must be in compliance with "subsection (a)(1)," but it did not; instead Congress required compliance with subsection (a) as a whole, a two-paragraph provision that includes the prohibition on placing camp cars (and other forms of sleeping quarters) near certain switching or humping operations. It is a basic canon of statutory construction that all words of a statute should be given effect.

To give subsection (b) meaning, with respect to requiring camp cars to be in compliance with the old mandate of subsection (a)(2), some act must be required that is possible to perform in the future, specifically not later than the December 31, 2009, date stated in subsection (b). FRA reads that extra requirement imposed by subsection (b) to be that camp cars exclusively occupied by MOW workers be subject to subsection (a)(2). With respect to subsection (a)(2), which contains a compliance date about 32 years before the enactment of subsection (a)(2), a new compliance date would be necessary in order to avoid creating an unconstitutional, ex post facto law, and that is what Congress provided with the new statutory deadline for compliance of December 31, 2009. FRA does not read subsection (b) as supplanting the July 8, 1976, effective date of the prohibition in subsection (a)(2) with respect to construction or reconstruction of sleeping quarters occupied by train employees, signal employees, or dispatching service employees. Rather, FRA reads the text of section 21106(b) as a direct, statutory requirement that railroads using camp cars as sleeping quarters see to it that the cars exclusively occupied by MOW workers comply with the statutory requirements of not only subsection (a)(1), but also subsection (a)(2), and to do so by December 31, 2009.

Of course, it could be argued that Congress simply made a technical error in requiring that camp cars comply with all of subsection (a) and that it meant to say "subsection (a)(1)," particularly given that the requirement is to "retrofit or replace" the cars, not to "retrofit or replace and position" the cars. FRA thinks that the legislative history of section 420 of RSIA argues against such a strict interpretation. That legislative history indicates that that Congress invited FRA to take a new, more protective look at camp cars. The House precursor to section 420 of RSIA would have directly prohibited the use of camp cars entirely by statute, effective one year after the date of enactment. *See* section 202 of H.R. 2095 as reported by the House Committee on Transportation and Infrastructure in H.R. Rep. No. 110–336 and analysis at p. 39. The Senate precursor to section 420 of RSIA would have authorized FRA to prohibit railroads' use of camp cars as sleeping quarters (*i.e.*, by regulation or order) "if necessary to protect the health and safety of the employees." *See* section 410 of S. 1889 as reported by the Senate Committee on Commerce, Science, and Transportation in S. Rep. No. 110–270. Based on the plain meaning of 49 U.S.C. 21106 and the legislative history of section 420 of RSIA, FRA believes its interpretation applying the location requirement of subsection (a)(2) to camp cars occupied exclusively by MOW workers is both correct and appropriate.

To carry out this statutory interpretation, FRA is proposing an

amendment to subpart C. The statutory authority to conduct this aspect of the rulemaking is FRA's authority under 49 U.S.C. 21106(a)(2) to prescribe regulations to implement that statutory provision, which reads (as revised during the 1994 recodification of the rail safety laws effected by Pub. L. 103–272) as follows:

> A railroad carrier * * * (2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters * * * in an area or in the immediate vicinity of an area, *as determined under regulations prescribed by the Secretary of Transportation*, in which railroad switching or humping operations are performed.

[Emphasis added.] This is the authority under which FRA originally prescribed subpart C. 41 FR 53070, Dec. 3, 1976.

II. Section-by-Section Analysis

Part 228

FRA proposes to revise the name of 49 CFR part 228 to reflect all of its contents more explicitly. The current name of the part is "HOURS OF SERVICE OF RAILROAD EMPLOYEES". FRA proposes to rename the part "HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS".

Subpart A of Part 228

FRA proposes to tailor § 228.1, Scope, to reflect the addition of new subpart E, Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters such as by adding new paragraph (c).

FRA also proposes to amend § 228.3, Application. Currently, that section, says that, in general, part 228 applies to railroads and contractors and subcontractors of railroads. FRA proposes to revise the section to indicate that although subparts B and D apply to railroads and contractors and subcontractors of railroads, subparts C and E apply only to railroads. Subpart A contains no duties that apply to any entity; its definitions apply to terms in the part as a whole or individual subparts. This section is being amended to clarify that both plant railroads and tourist railroads that are not part of the general railroad system of transportation are exempt from the requirements of part 228.

Finally, FRA proposes to amend § 228.5, Definitions, by adding definitions of four terms. The terms "plant railroad" and "tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation" are used in the proposed "application" provisions of subpart A and proposed subpart E, and both terms refer to types of operations that have been traditionally been excluded from FRA regulations because they are not part of the general railroad system of transportation. There is a more extensive explanation of this system in appendix A to 49 CFR part 209, and it is explicitly defined there as "the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas." The terms "camp car" and "MOW worker" are used in proposed subparts C and E. "Camp car" would be defined as "a trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee or MOW worker. A wreck train is not included."

The longstanding definition of "camp car" in the guidelines of 49 CFR part 228, app. C is clarified by adding "or any other mobile vehicle or mobile structure" as catch-all language. For example, a recreational vehicle would be a camp car. In addition, the phrase "railroad employees" is replaced with "an employee or MOW worker." The term "employee" is defined in existing § 228.5 and means a train employee, signal employee, or dispatching service employee. The term "MOW worker" would be defined as "an individual employed to maintain the right of way of a railroad"; the language of the definition is based on the statutory provision at 49 U.S.C. 21106(a)(1).

Subpart B of Part 228

FRA proposes to remove § 228.13, Preemptive effect, for two reasons. First, the section is unnecessary because it is duplicative of statutory law at 49 U.S.C. 20106 and case law. Second, the section is incomplete because it omits reference to the preemptive effect of the hours of service laws (49 U.S.C. chapter 211), the authority for 49 CFR part 228, subparts C and E, as provided under case law. The hours of service laws have been interpreted by the Supreme Court as preempting State regulation of the hours of railroad employees. *See Hill* v. *State of Florida ex rel. Watson*, 325 U.S. 538, 553 (1945).

In addition, FRA proposes to redesignate two provisions in subpart B that are intended to apply to the entire part in order to move them to subpart A, General. In particular, FRA proposes to redesignate § 228.21, Civil penalty, and § 228.23, Criminal penalty, as § 228.6, Penalty.

Subpart C of Part 228

FRA proposes to change the heading of subpart C from "Construction of Employee Sleeping Quarters" to "Construction of Railroad-Provided Sleeping Quarters." "Railroad-Provided" is added to emphasize that the regulations apply only to sleeping quarters that are provided by a railroad, and the word "Employee" is deleted since the proposed subpart would apply not only to sleeping quarters occupied by an employee but also to sleeping quarters in the form of a camp car that are provided by a railroad to an MOW worker.

In § 228.101, the heading would be changed from "Distance requirement; definitions" to "Distance requirement for railroad-provided employee sleeping quarters; definitions used in this subpart." This revision is intended to reflect that the section applies only to sleeping quarters for employees (not for MOW workers). That section reflects the 1976 statutory amendment discussed earlier in the preamble that carries a July 8, 1976, compliance date.

Section 228.102 Distance Requirement for Camp Cars Provided by Railroads as Sleeping Quarters Exclusively for MOW Workers

In new § 228.102, FRA proposes to restate the statutory language at 49 U.S.C. 21106(b) and 21106(a)(2) by saying that a railroad that uses camp cars must comply by December 31, 2009, with the prohibition in 49 U.S.C. 21106(a)(2) with respect to those camp cars that are provided as sleeping quarters exclusively to MOW workers. (Camp cars for train employees, signal employees, or dispatching service employees or those occupied by both covered service employees and MOW workers are already subject to the July 8, 1976, compliance date in 49 U.S.C. 21106(a)(2) and 49 CFR 228.101.) In other words, under the statute, starting December 31, 2009, a railroad must not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping is performed. (Of course, compliance with the regulation itself would not be due until the date established in the final rule.) The key terms in the new proposed section are already defined in the subpart or at § 228.5. In effect, absent FRA's special approval in accordance with subpart C, a railroad may not begin construction or reconstruction of a camp car (including the placement of a camp car) for MOW workers in or within the distance

specified in the regulations at 228.101(b) (one-half mile from the location where such switching or humping of placarded cars takes place). Procedures on requesting FRA's special approval are found within that subpart and at 49 CFR part 211. The proposed section notes that references to "employees" in the sections on procedures on §§ 228.103–228.107 must be read to include MOW workers if read in conjunction with the proposed section.

Subpart E of Part 228

FRA proposes to add new subpart E entitled, "Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters."

Section 228.301 Purpose and scope

This proposed section is a basic restatement of the legal mandate in section 420 of RSIA that is codified at 49 U.S.C. 21106(c), which requires the issuance of regulations to implement 49 U.S.C. 21106(a)(1) with respect to certain camp cars. Section 21106(a)(1) of title 49 of the U.S. Code provides that sleeping quarters provided by a railroad to its covered service employees and MOW workers must be—

> clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees * * *.

As previously discussed, FRA does not currently have regulations addressing safety and health requirements for camp cars, but instead has published guidelines that interpret pre-RSIA statutory requirements. 49 CFR part 228, appendix C. The regulations proposed in this NPRM would update and supplant the outdated guidelines consistent with RSIA's requirements.

Section 228.303 Application and Responsibility for Compliance

This proposed section defines the railroads that would be covered by the proposed new subpart. All railroads would be covered, with the exception of three types of railroad operations. The three listed exceptions are for operations that are not part of the general railroad system of transportation: (1) Railroads that operate exclusively on track that is not part of that system (plant railroads, as that term is defined in § 228.5); (2) tourist, scenic, historic, or excursion railroads that are not part of the general railroad system of transportation, a term also defined in § 228.5 (tourist railroads); and (3) rapid transit operations in an urban area that are not connected to the general railroad system of transportation. *See* 49 CFR part 209, app. A for a discussion of "general railroad system of transportation." As a matter of policy, FRA almost never exercises its statutory jurisdiction over plant railroads and generally does not exercise its statutory jurisdiction over tourist railroads that operate only off the general system. FRA lacks statutory jurisdiction over urban rapid transit operations not connected to the general system. *See* 49 U.S.C. 20102, 20103.

In addition, proposed paragraph (b) explains that even though the subpart applies only to railroads, a railroad may not avoid fulfilling the requirements of this subpart by using contractors or subcontractors. If, for example, a railroad uses a contractor to provide dining services for the occupants of a camp car, FRA will still enforce the provisions of § 228.325 to ensure that the food service is safe and sanitary. FRA will hold the railroad liable for its contractor's or subcontractor's failing to fulfill the requirements of this proposed subpart.

Section 228.305 Compliance Date

This proposed section establishes the deadline for compliance. A December 31, 2010 deadline for compliance with the regulations was set by Congress in section 420 of RSIA, but the final rule may not become effective until 60 days after it is published.

Section 228.307 Definitions

This proposed section defines key terms used in proposed subpart E. The definitions are set forth alphabetically. FRA intends these definitions to clarify the meaning of terms as they are used in the text of the proposed subpart. Many of these definitions were originally set forth in FRA's 1990 Guidelines. In addition, many of these definitions have been taken from standards issued by OSHA.

Section 228.309 Structure, Emergency Egress, Lighting, Temperature, and Noise-Level Standards

This proposed section sets forth a series of requirements for camp cars provided by a railroad as sleeping quarters to employees and MOW workers. First, the section requires that the camp cars are constructed so as to provide protection from the elements. Second, the section requires that the camp cars provide an opportunity for rest free from interruptions caused by noise under the control of the railroad that provides the camp cars. The limit of 55 dB(A) that FRA intends to establish is based on the longstanding interpretation of the hours of service statutory provision related to sleeping quarters. 49 U.S.C. 21106(a)(1); 49 CFR part 228, app. A and C. It is notable that the 55 dB(A) level is typical of semi-urban and suburban neighborhood outside ambient noise during the evening hours with minimal street traffic. Levels such as these have also been measured in the same neighborhoods on side streets during daylight hours; thus, the 55 dB(A) limit should not be difficult to achieve. Third, this section requires that the camp cars be able to maintain a minimum temperature during cold weather and a maximum temperature during hot weather. FRA invites comment on whether the temperatures currently specified should be changed. Fourth, the section requires that camp cars provide an adequate means of egress in the event of an emergency situation. There must be an exit at both ends of the camp car so that occupants may pass through each end frame. Finally, FRA is also establishing minimum lighting standards, including provisions requiring the interior pathway to an emergency exit not immediately accessible to the occupants to be illuminated at all times for emergency egress purposes.

Section 228.311 Minimum Space Requirements

This proposed section requires that, to prevent overcrowding, the camp car's occupants have at least 50 square feet each; in a facility where occupants cook, live, and sleep, a minimum of 90 square feet per occupant must be provided. The proposed section also requires certain types of furniture.

Section 228.313 Electrical System Requirements

This proposed section sets forth requirements regarding the safety of heating, cooking, ventilation, air conditioning, and water heating equipment. These systems must be installed in accordance with all applicable provisions of the 2008 version of the National Electrical Code. In addition, all electrical systems installed must be compliant with that code.

This section of the proposed rule does not specify any certain code that must be used for heating, ventilation, and air conditioning (HVAC) systems, but does require that all such systems be safe and working. FRA anticipates that, to ensure that these systems are safe and operable, railroads will require HVAC systems in their camp cars to meet widely-adopted standards, such as those of the standards of the Sheet Metal and Air

Conditioning Contractors National Association, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, and the American National Standards Institute. FRA is requesting comments on an appropriate standard to use for this provision as well as the practicability of FRA's attempting to enforce such standards. Please note that under 49 U.S.C. 20116, the date of adoption of a non-Federal standard incorporated by reference in a rail safety rule must be stated in the rule in order for the standard to become effective.

Section 228.315 Vermin Control

This proposed section sets forth requirements related to the prevention and resolution of vermin infestations.

Section 228.317 Toilets

This proposed section represents a substantial revision of the parallel provision in FRA's 1990 Guidelines to reflect a more appropriate number of toilets required. Further, the proposed section requires that there be at least two toilet rooms located within a camp car that has sleeping facilities. Additionally, if a camp car is lodging more than 10 occupants, then an additional toilet room must be provided within the camp car for each group of one to five occupants in excess of the 10. For example, if there are 12 occupants lodged in a camp car, there must be a total of three toilet rooms in the camp car (two for the first ten occupants and one for the additional two occupants). FRA believes that this requirement provides an adequate standard for the minimum number of toilets. A toilet room must have a door that latches, one that is capable of being and staying securely closed and be sufficient to assure privacy. Certain construction and cleanliness standards are also included in this section.

Section 228.319 Lavatories

This proposed section requires every camp car that provides a sleeping facility to have a basin with running water, soap, and hand-drying equipment or towels. It also requires at least two basins per car with sleeping facilities. If the running water available through a basin is not potable, a sign to that effect must be posted nearby.

Section 228.321 Showering Facilities

The proposed section mandates a minimum number of showers, construction requirements for the showers, and the provision of showering supplies. If the running water available through a shower is not potable, a sign to that effect must be posted nearby.

Section 228.323 Potable Water

This proposed section sets forth requirements to ensure that the water provided to the occupants of camp cars is safe. Potable water may be provided either as bottled water or as supplied through a plumbing system. Water uses such as personal oral hygiene, drinking, food washing, preparation, cooking, cleaning of the cooking utensils, cooking surfaces, and eating surfaces, *etc.* all require the use of potable water. If the water supplied for these uses is provided by means of a system of tanks, lines and other plumbing, the integrity and cleanliness of such systems needs to be maintained. To ensure that this is done, FRA intends to establish requirements to facilitate this objective.

Individuals who fill potable water systems servicing a camp car must be trained. The source for water provided to the occupants of a camp car must meet minimum standards put forth by the Environmental Protection Agency under 49 CFR part 141, National Primary Drinking Water Regulations. The railroad must obtain a certificate indicating this fact, which must be kept with the camp car for the duration of the connection, after which is must be sent to a centralized location, such as the railroad's system headquarters. This location should be the depository for all water certification records for the railroad. Equipment and construction employed to provide potable water to a camp car must be approved by the Food and Drug Administration. The water itself must be stored in sanitary containers and be dispensed so that sanitary conditions are maintained. Distribution lines must have adequate pressure for simultaneous use. Potable water systems must be flushed and disinfected regularly, and the steps that are taken must be recorded. Those records must be kept within the camp for the duration of the connection and then sent to a centralized location. The section sets forth procedures to follow in the instance of a report of a problem with the taste of the water or a report of a health problem because of the water.

Section 228.325 Food Service in a Camp Car or Separate Kitchen or Dining Car

The proposed section prohibits the presence of food and beverages in toilet rooms and toxic materials areas, imposes requirements applicable when a central dining operation is provided, and ensures that food service facilities and operations will operate hygienically. The limitations of paragraphs (c) and (d) do not apply to food service from nearby restaurants that are subject to State law.

Section 228.327 Sewage and Waste Collection and Disposal

This proposed section addresses the necessity of wastes being disposed to ensure a sanitary environment. Timely removal of all kinds of waste is mandated by proposed § 228.329(a). Camp cars must be equipped with a method to dispose of sewage according to proposed § 228.329(b). Appropriate waste containers for both general waste and food waste are required by proposed § 228.329(c) and (d), respectively.

Section 228.329 Housekeeping

This proposed section requires that each camp car be kept as clean as is practicable given the type of work performed by the occupants of the car. The section also requires elimination of splinters, unnecessary holes, and other conditions or features that impede cleaning.

Section 228.331 First Aid

This proposed section requires a first-aid kit in each camp car with specified contents. This list is based on the requirements for first-aid kits in passenger trains set forth in FRA's regulations on passenger train emergency preparedness at 49 CFR 239.101(a)(6), but adds a requirement of two elastic wraps. Railroads should add items to the first-aid kit as conditions warrant, for example, increasing the minimum number of bandages for a larger crew than normal or providing additional items if the occupants of the camp car regularly deal with hazardous material. Additional items railroads may consider providing include ammonia inhalants and a splint.

Section 228.333 Repairs

The proposed section gives a limited amount of time for a railroad, after receiving notice from FRA to repair a camp car that does not comply with these regulations. The section also requires that a railroad provide alternate accommodations when a camp car does not provide the essential services such as proper cooling or heating. In addition, if a camp car is noncompliant with the requirements of this subpart, and the railroad otherwise would have provided meals for occupants, it must provide for alternate arrangement for meals. 49 CFR part 228, app. A and C. FRA is considering specifying exactly how quickly a railroad must provide alternative accommodations for occupants when a camp car lacks

essential services and invites comment on this issue.

Section 228.335 Electronic Recordkeeping

This section provides for electronic recordkeeping of records required by this subpart.

Appendix A and Appendix C of Part 228

Finally, the proposal would make conforming changes to appendix A to part 228 and remove appendix C to part 228. The proposal would revise appendix A (FRA's statement of agency policy and interpretation of the hours of service laws) by removing the paragraph discussing the 1990 Guidelines, codified in appendix C to part 228, and the rationale for establishing those guidelines because appendix C would be eliminated and superseded by new 49 CFR part 228, subpart E. The proposal would also remove appendix C to reflect that the guidelines with respect to camp cars would be revised and converted into regulations at 49 CFR part 228, subpart E, which would become effective upon the date that compliance with the regulations is first required.

III. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This 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 evaluation addressing the economic impact of this proposed rulemaking. Document inspection and copying facilities are available at U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2009–0042.

To carry out a 2008 Congressional rulemaking mandate, FRA is proposing to create a new subpart of part 228, subpart E, which would prescribe minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees and individuals employed to maintain its right of way. The proposed regulations would supplant existing FRA guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, and sanitary, and afford those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the railroad. In further response to the rulemaking mandate, the proposed regulations would include the additional statutory requirements, enacted in 2008, that camp cars be provided with indoor toilets, potable water, and other features to protect the health of such workers.

Under separate but related statutory authority, FRA is proposing to amend subpart C of 49 CFR part 228, "Construction of Employee Sleeping Quarters." In accordance with the RSIA, FRA applies the location restrictions applicable to employee occupied camp cars to railroad camp cars occupied solely by MOW workers.

Finally, the proposal would make conforming changes to appendix A to part 228 and remove part appendix C to part 228. The proposal would also clarify its provision on applicability, remove an existing provision on the preemptive effect of part 228 as unnecessary, and move, without change, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

FRA estimates costs and benefits for the proposed rule. In this case, only one railroad would be affected, NS. NS has asserted and FRA assumes that they are in compliance due to statutory mandate or voluntary compliance with the 1990 guidelines. FRA expects NS's costs of complying with this proposed rule to be nominal and limited to such requirements as the installation of non-potable water signage and first-aid kit items. Consequently, NS is already experiencing the benefits that would flow from this NPRM. Any increase in realized benefits would be small. The main benefit of this proposed rule is the assurance it will provide that the health and safety benefits reaped by NS's upgrades will remain in place. FRA is confident that the benefits will more than justify incurring the nominal costs associated with implementation of the proposed rule. FRA is requesting comments on all aspects of this economic analysis, including its underlying assumptions.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No small railroads will be affected by the rule. FRA has prepared and placed in the docket this certification. FRA requests comments on this certification as well as all other aspects of this NPRM.

"Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad" with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars. *See* "Size Eligibility Provisions and Standards," 13 CFR part 121, subpart A. Additionally, 5 U.S.C 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies use a different standard for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The $20 million limit is based on the Surface Transportation Board's

revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

The *factual basis* for the certification that this final rule will not have a significant economic impact on a substantial number of small entities is that no small entities are affected. This proposed rule would affect only one railroad, the Norfolk Southern Railway, which is a Class I railroad with revenues far exceeding inflation-adjusted $20 million. Accordingly, FRA does not consider this impact to be significant. Nor does FRA anticipate that this regulation would result in long-term or short-term insolvency for any small railroad.

C. Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any direct compliance costs on State and local governments; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. FRA has also determined that this proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970, 49 U.S.C. 20106 (Section 20106), and case law interpreting the statutory predecessor of the hours of service laws at 49 U.S.C. chapter 211 (the Hours of Service Act). *See* Public Law 103–272. Section 20106 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. The Hours of Service Act has been interpreted by the Supreme Court as preempting State regulation of the hours of railroad employees. *See Hill* v. *State of Florida ex rel. Watson,* 325 U.S. 538, 553 (1945).

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.319—Lavatories—Signs—Non-use for Consumption of Non-potable water.	1 Railroad	600 signs	2.5 minutes	25 hours.
228.321—Showering Facilities—Signs—Non-use for Consumption of Non-potable water.	1 Railroad	300 signs	2.5 minutes	13 hours.
228.323—Potable Water:				
—Water Hydrants—Inspections/Records for Water Hydrants, Hoses, Nozzles Used for Supplying Potable Water.	1 Railroad	370 inspections/ records.	5 minutes	31 hours.
—Inspection Records—Copy to Centralized Location When Connection Terminated.	1 Railroad	370 copies	10 seconds	1 hour.
Training—For Individuals Permitted to Fill Potable Water Systems.	1 Railroad	37 trained employees	15 minutes	9 hours.
—Certification by Laboratory for Potable Water Drawn from a Different Source.	1 Railroad	370 certificates	16 hours	5,920 hours.
—Copy of Certificate to Centralized Location When Connection Terminated.	1 Railroad	370 copies	10 seconds	1 hour.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Flushing—Record for Each Potable Water System Drained and Flushed with Disinfectant Every 120 days.	1 Railroad	584 records	2 hours	1,168 hours.
—Occupant Reports of Taste Problem	1 Railroad	10 oral reports	10 seconds	.028 hour.
—Draining/Flushing and Required Record Resulting from Occupant Taste Reports Plus Necessary Lab Tests/Certificates.	1 Railroad	10 records + 10 tests/certif.	2 hours + 16 hours	180 hours.
—Lab Report Copies	1 Railroad	10 copies	2 minutes	.3333 hour.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Railroad Safety, at 202–493–6292, or Ms. Kimberly Toone, Office of Information Technology, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan @dot.gov;* or *Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. 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 million or more (adjusted annually for inflation) [$140.8 million in 2010] 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. This final rule would not result in the expenditure, in the aggregate, of $140.8 million or more in any one year, and thus preparation of such a statement is not required.

G. Environmental Assessment

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

> (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.
>
> * * *
>
> The following classes of FRA actions are categorically excluded:
>
> * * *
>
> (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 228 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

1. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49; and 49 U.S.C. 103.

2. The heading of part 228 is revised to read as set forth above.

3. Section 228.1 is amended by—

a. Removing the semicolon and the word "and" at the end of paragraph (a), and adding a period in their place;

b. Removing the word "employee" from paragraph (b); and

c. Adding a new paragraph (c) to read as follows:

§ 228.1 Scope.

* * * * *

(c) Establishes minimum safety and health standards for camp cars provided by a railroad as sleeping quarters for its employees and individuals employed to maintain its rights of way.

4. Section 228.3 is revised to read as follows:

§ 228.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, subparts A, B, and D of this part apply to all railroads, all contractors for railroads, and all subcontractors for railroads. Except as provided in paragraph (b) of this section, subparts C and E of this part apply only to all railroads.

(b) This part does not apply to—

(1) A railroad, a contractor for a railroad, or a subcontractor for a railroad that operates only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* a plant railroad as defined in § 228.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 228.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

5. Section 228.5 is amended by adding definitions for "Camp car," "MOW worker," "Plant railroad," and "Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation" in alphabetical order to read as follows:

§ 228.5 Definitions.

* * * * *

Camp car means a trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee or MOW worker. A wreck train is not included.

* * * * *

MOW worker means an individual employed to maintain the right of way of a railroad.

* * * * *

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

* * * * *

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

* * * * *

6. Section 228.6 is added to subpart A to read as follows:

§ 228.6 Penalties.

(a) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650 and 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. *See* appendix B to this part for a statement of agency civil penalty policy. Violations of the Hours of Service Act itself (*e.g.,* requiring an employee to work excessive hours or beginning construction of a sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under that Act's penalty provision, 45 U.S.C. 64a.

(b) Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully

violates any requirement of this part may be liable for criminal penalties of a fine up to $5,000, imprisonment for up to two years, or both, in accordance with 49 U.S.C. 21311(a).

§ 228.13 [Removed and Reserved]

7. Section 228.13 is removed and reserved.

§ 228.21 [Removed and Reserved]

8. Section 228.21 is removed and reserved.

§ 228.23 [Removed and Reserved]

9. Section 228.23 is removed and reserved.

10. The heading of subpart C of part 228 is revised to read as follows:

Subpart C—Construction of Railroad-Provided Sleeping Quarters

11. The heading of § 228.101 is revised to read as follows:

§ 228.101 Distance requirement for railroad-provided employee sleeping quarters; definitions used in this subpart.

* * * * *

12. Section 228.102 is added to subpart C to read as follows:

§ 228.102 Distance requirement for camp cars provided as sleeping quarters exclusively to MOW workers.

(a) The hours of service laws at 49 U.S.C. 21106(b) provide that a railroad that uses camp cars must comply with 49 U.S.C. 21106(a) no later than December 31, 2009. Accordingly, on or after December 31, 2009, a railroad shall not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping of placarded cars is performed.

(b) This subpart includes definitions of most of the relevant terms (§ 228.101(b)–(c)), procedures under which a railroad may request a determination by the Federal Railroad Administration that a particular proposed site for the camp car is not within the "immediate vicinity" of railroad switching or humping operations (§§ 228.103 and 228.105), and the basic criteria utilized in evaluating proposed sites. *See* § 228.5 for definitions of other terms. For purposes of this § 228.102, references to "employees" in §§ 228.103–228.107 shall be read to include MOW workers.

13. Subpart E is added to read as follows:

Subpart E—Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters

Sec.

228.301 Purpose and scope.
228.303 Application and responsibility for compliance.
228.305 Compliance date.
228.307 Definitions.
228.309 Structure, emergency egress, lighting, temperature, and noise-level standards.
228.311 Minimum space requirements.
228.313 Electrical system requirements.
228.315 Vermin control.
228.317 Toilets.
228.319 Lavatories.
228.321 Showering facilities.
228.323 Potable water.
228.325 Food service in a camp car or separate kitchen or dining facility in a camp.
228.327 Sewage and waste collection and disposal.
228.329 Housekeeping.
228.331 First aid.
228.333 Repairs.
228.335 Electronic recordkeeping.

Subpart E—Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters

§ 228.301 Purpose and scope.

The purpose of this subpart is to prescribe standards for the design, operation, and maintenance of camp cars that a railroad uses as sleeping quarters for its employees and MOW workers so as to protect the safety and health of those employees and MOW workers and give them an opportunity for rest free from the interruptions caused by noise under the control of the railroad, and provide indoor toilet facilities, potable water, and other features to protect the health and safety of the employees and MOW workers.

§ 228.303 Application and responsibility for compliance.

(a) This subpart applies to all railroads except the following:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 228.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 228.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this subpart are generally stated in terms of the duty of a railroad, each person, including a contractor or subcontractor for a railroad, who performs any task covered by this subpart, shall perform that task in accordance with this subpart.

§ 228.305 Compliance date.

On and after [INSERT DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE], a railroad shall not provide a camp car for use as sleeping quarters by an employee or MOW worker unless the camp car complies with all requirements of this subpart.

§ 228.307 Definitions.

As used in this subpart—

dB(A) means the sound pressure level in decibels measured on the A-weighted scale.

Decibel (dB) means a logarithmic unit of measurement that expresses the magnitude of a physical quantity (usually power or intensity) relative to a specified reference level. For the measurement of noise in this subpart, the reference level for the intensity of sound pressure in air is 20 micropascals.

Foot-candle means a one lumen of light density per square foot.

HVAC means heating, ventilation, and air conditioning.

Lavatory means a basin or similar vessel used primarily for washing of the hands, arms, face, and head.

$L_{eq}(8)$ means the equivalent steady state sound level that in 8 hours would contain the same acoustic energy as the time-varying sound level during the same time period.

Nonwater carriage toilet means a toilet not connected to a sewer.

Occupant means an employee or an MOW worker (both as defined in § 228.5) whose sleeping quarters is a railroad-provided camp car.

Ppm means parts per million.

Potable water means water that meets the quality standards prescribed in the U.S. Environmental Protection Agency's National Primary Drinking Water Standards set forth in 40 CFR part 141.

Potable water system means the containers, tanks, and associated plumbing lines and valves that hold, convey, and dispense potable water within a camp car.

Toilet means a chemical toilet, a recirculating toilet, a combustion toilet, or a toilet that is flushed with water; however, a urinal is not a toilet.

Toilet room means a room containing a toilet.

Toxic material means a material in concentration or amount of such toxicity as to constitute a recognized hazard that is causing or is likely to cause death or serious physical harm.

Watering means the act of filling potable water systems.

§ 228.309 Structure, emergency egress, lighting, temperature, and noise-level standards.

(a) *General.* Each camp car must be constructed in a manner that will provide protection against the elements.

(b) *Floors.* Floors must be of smooth and tight construction and must be kept in good repair.

(c) *Windows and other openings.* (1) All living quarters must be provided with windows the total area of which must be not less than 10 percent of the floor area. At least one-half of each window designed to be opened must be so constructed that it can be opened for purposes of ventilation. Durable opaque window coverings must be provided to reduce the entrance of light during sleeping hours.

(2) All exterior openings must be effectively screened with 16-mesh material. All screen doors must be equipped with self-closing devices.

(d) *Steps, entry ways, passageways, and corridors.* All steps, entry ways, passageways, and corridors providing normal entry to or between camp cars must be constructed of durable weather-resistant material and properly maintained. Any broken or unsafe fixtures or components in need of repair must be repaired or replaced promptly.

(e) *Emergency egress.* Each camp car must be constructed in a manner to provide adequate means of egress in an emergency situation. At a minimum, a means of emergency egress must be located in each end of the camp car for passage through each end frame.

(f) *Lighting.* Each habitable room in a camp car including but not limited to a toilet room, that is provided to an occupant must be provided with adequate lighting as specified below:

(1) When occupants are present, the pathway to any exit not immediately accessible to occupants, such as through an interior corridor, shall be illuminated at all times to values of at least 1 foot-candle measured at the floor;

(2) Toilet and shower rooms shall have controlled lighting that will illuminate the room to values of at least 10 foot-candles measured at the floor;

(3) Other areas shall have controlled lighting that will illuminate the room area to values of at least 30 foot-candles measured at the floor.

(g) *Temperature.* Each camp car must be provided with equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (F.) during cold weather and no greater than 75 degrees F. during hot weather.

(h) *Noise control.* Noise levels attributable to noise sources under the control of the railroad shall not exceed an L_{eq} (8) value of 55 dB(A), with windows and doors closed and exclusive of noise from cooling, heating, and ventilating equipment, for any 480-minute period during which the facility is occupied.

§ 228.311 Minimum space requirements.

(a) Each camp car used for sleeping purposes must contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling, measured at the entrance to the car, must be provided.

(b) A bed, cot, or bunk and suitable storage facility such as a wall locker or space for a foot locker for clothing and personal articles must be provided in every room used for sleeping purposes. Except where partitions are provided, such beds or similar facilities must be spaced not closer than 36 inches laterally (except in modular units, which shall be spaced not closer than 30 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor. If double-deck bunks are used, they must be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk must be not less than 27 inches. Triple-deck bunks may not be used.

(c) In a facility where occupants cook, live, and sleep, a minimum of 90 square feet of floor space per occupants must be provided. Sanitary facilities must be provided for storing and preparing food.

§ 228.313 Electrical system requirements.

(a) The National Electrical Code to which paragraphs (b) and (c) of this section refer is the 2008 version, approved by the National Fire Protection Association (NFPA) Standards Council on July 26, 2007 with an effective date of August 15, 2007.

(b) All heating, cooking, ventilation, air conditioning, and water heating equipment must be installed in accordance with the National Electrical Code governing such installations.

(c) All electrical systems installed must be compliant with the National Electrical Code, including external electrical supply connections.

(d) Each occupied camp car shall be equipped with or serviced by a safe and working HVAC system.

§ 228.315 Vermin control.

Camp cars shall be constructed, equipped, and maintained to prevent the entrance or harborage of rodents, insects, or other vermin. A continuing and effective extermination program shall be instituted where the presence of vermin is detected.

§ 228.317 Toilets.

(a) *Number of toilets provided.* (1) For each individual camp car that provides sleeping facilities, a minimum of two toilet rooms within the car is required. If a camp car has more than 10 occupants, an additional toilet room within the car for each additional group of one to five occupants is required.

(2) A toilet rooms must be equipped with at least one functional toilet to count toward the minimum requirements of this section.

(b) *Construction of toilet rooms.* Each toilet room must occupy a separate compartment with a door that latches and walls or partitions between fixtures sufficient to assure privacy.

(c) *Supplies and sanitation.* (1) An adequate supply of toilet paper must be provided in each toilet room, unless provided to the occupants individually.

(2) Each toilet must be kept in a clean and sanitary condition and cleaned regularly when the camp car is being used. In the case of a non-water carriage toilet facility, it must be cleaned and changed regularly when the camp car is being used.

(d) *Sewage disposal facilities.* (1) All sanitary sewer lines and floor drains from a camp car toilet facility must be connected to a public sewer where available and practical, unless the car is equipped with a holding tank that is emptied in a sanitary manner.

(2) The sewage disposal method must not endanger the health of occupants.

(3) For toilet facilities connected to a holding tank, the tank must be constructed in a manner that prevents vermin from entry and odors from escaping into the camp car.

§ 228.319 Lavatories.

(a) *Number.* Each camp car that provides a sleeping facility must contain at least two functioning lavatories.

(b) *Water.* Each lavatory must be provided with either hot and cold running water or tepid running water. If the water supplied to a lavatory is not from a potable source or not supplied through a system maintained as required in § 228.323, the lavatory area must contain a sign, visible to the user when the lavatory is being used, bearing a message to the following effect: "The water is not suitable for human consumption. Do not drink the water."

(c) *Soap.* Unless otherwise provided by a collective bargaining agreement, hand soap or similar cleansing agents must be provided.

(d) *Means of drying.* Unless otherwise provided by a collective bargaining agreement, individual hand towels, of cloth or paper, warm air blowers, or clean sections of continuous cloth toweling must be provided near the lavatories.

§ 228.321 Showering facilities.

(a) *Number.* For each individual camp car that provides sleeping facilities, a minimum of two showers within the car is required. If a camp car has more than 10 occupants, an additional shower within the car for each additional group of one to five occupants is required.

(b) *Floors.* (1) Shower floors must be constructed of non-slippery materials;

(2) Floor drains must be provided in all shower baths and shower rooms to remove waste water and facilitate cleaning;

(3) All junctions of the curbing and the floor must be sealed; and

(4) There shall be no fixed grate or other instrument on the shower floor significantly hindering the cleaning of the shower floor or drain.

(c) *Walls and partitions.* The walls and partitions of a shower room must be smooth and impervious to the height of splash.

(d) *Water.* An adequate supply of hot and cold running water must be provided for showering purposes.

(e) *Signage.* If the water supplied to the showers is not from a potable source or is from a potable source but supplied through a system that is not maintained as required in § 228.323, the shower area must contain a sign, visible to the user when the shower is being used, bearing a message to the following effect: "The water is not suitable for human consumption. Do not drink the water."

(e) *Showering necessities.* (1) Unless otherwise provided by a collective bargaining agreement, body soap or other appropriate cleansing agent convenient to the showers must be provided.

(2) Showers must be provided with hot and cold water feeding a common discharge line.

(3) Unless otherwise provided by a collective bargaining agreement, each occupant who uses a shower must be provided with an individual clean towel.

§ 228.323 Potable water.

(a) *General requirements.* (1) Potable water shall be adequately and conveniently provided to all occupants of a camp car for drinking, personal oral hygiene, cooking, washing of foods, washing of cooking or eating utensils, and washing of premises for food preparation or processing.

(2) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, whether or not they are fitted with a cover, are prohibited.

(3) A common drinking cup and other common utensils are prohibited.

(b) *Potable water source.* (1) If potable water is provided in bottled form, it shall be stored in a manner recommended by the supplier in order to prevent contamination in storage. Bottled water shall contain a label identifying the packager and the source of the water.

(2) If potable water is drawn from a local source, the source must meet the drinking water standards established by the U.S. Environmental Protection Agency under 40 CFR part 141, National Primary Drinking Water Regulations.

(3) All equipment and construction used for supplying potable water to a camp car water system (*e.g.,* a hose, nozzle, or back-flow prevention) shall be approved by the Food and Drug Administration.

(4) *Water hydrants.* Each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system shall be inspected prior to use. Each such hose or nozzle used shall be cleaned and sanitized as part of the inspection. A signed, dated record of this inspection shall be kept within the camp for the period of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(5) *Training.* Only a trained individual is permitted to fill the potable water systems. Each individual who fills a potable water system shall be trained in—

(i) The approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles used for filling potable water systems; and

(ii) The approved procedures to prevent contamination during watering.

(6) *Certification.* Each time that potable water is drawn from a different local source, the railroad shall obtain a certificate from a State or local health authority indicating that the water from this source is of a quality not less than that prescribed in the National Primary Drinking Water Regulations promulgated by the U.S. Environmental Protection Agency or obtain such a certificate by a certified laboratory following testing for compliance with those standards. The current certification shall be kept within the camp for the duration of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(c) *Storage and distribution system*—(1) *Storage.* Potable water shall be stored in sanitary containers that prevent external contaminants from entering the potable water supply. Such contaminants include biological agents or materials and substances that can alter the taste or color or are toxic.

(2) *Dispensers.* Potable drinking water dispensers shall be designed, constructed, and serviced so that sanitary conditions are maintained, must be capable of being closed, and shall be equipped with a tap.

(3) *Distribution lines.* The distribution lines must be capable of supplying water at sufficient operating pressures to all taps for normal simultaneous operation.

(4) *Flushing.* Each potable water system shall be drained and flushed with a disinfecting solution at least once every 120 days The railroad shall maintain a record of the draining and flushing of each separate system within the camp for the last two drain and flush cycles. The record shall contain the date of the work and the name(s) of the individual(s) performing the work. The original record shall be maintained with the camp. A copy of each of these records shall be sent to a centralized location for the railroad and maintained for one year.

(i) The solution used for flushing and disinfection shall be a 100 parts per million by volume (ppm) chlorine solution.

(ii) The chlorine solution shall be held for one hour in all parts of the system to ensure disinfection.

(iii) The chlorine solution shall be purged from the system by a complete refilling and draining with fresh potable water.

(iv) The draining and flushing shall be done more frequently if an occupant reports a taste or health problem associated with the water, or following any plumbing repair.

(5) *Reported problems.* Following any report of a taste problem with the water from a system or a health problem resulting from the water in a system, samples of water from each tap or dispensing location on the system shall be collected and sent to a laboratory approved by the U.S. Environmental Protection Agency for testing for heterotrophic plate counts, total coliform, and fecal coliform. If a single sample fails any of these tests, the system must be treated as follows:

(i) Heterotrophic plate count. Drain and flush the system within two days, and then return it to service.

(ii) Total coliform. Remove the system from service, drain and flush system, resample the system, and then return the system to service.

(iii) Fecal coliform. Remove the system from service, drain and flush the system, resample the system, and do not return the system to service until a satisfactory result on the test of the samples is obtained from the laboratory.

(6) *Reports.* All laboratory reports pertaining to the water system of the camp car shall be maintained with the car. Within 15 days of the receipt of such a laboratory report, a copy of the report shall be posted for a minimum of 10 calendar days at a conspicuous location within the camp car or cars affected for review by occupants. The report shall be maintained in the camp for the duration of the same connection. When the connection is terminated, the certification must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

§ 228.325 Food service in a camp car or separate kitchen or dining facility in a camp.

(a) *Sanitary storage.* No food or beverage may be stored in a toilet room or in an area exposed to a toxic material.

(b) *Consumption of food or beverage on the premises.* No occupant shall be allowed to consume a food or beverage in a toilet room or in any area exposed to a toxic material.

(c) *Kitchens, dining halls, and feeding facilities.* (1) In each camp car where central dining operations are provided by the railroad or its contractor(s) or subcontractor(s), the food handling facilities shall be maintained in a clean and sanitary condition. *See* § 228.323, Potable water, generally.

(i) All surfaces used for food preparation shall be disinfected after each use.

(ii) The disinfection process shall include removal of chemical disinfectants that would adulterate foods prepared subsequent to disinfection.

(2) All perishable food shall be stored either under refrigeration or in a freezer. Refrigeration and freezer facilities shall be provided with a means to monitor temperature to ensure proper temperatures are maintained. The temperature of refrigerators shall be maintained at 40° Fahrenheit or below; the temperature of freezers shall be maintained at 0° Fahrenheit or below at all times.

(3) All non-perishable food shall be stored to prevent vermin and insect infestation.

(4) All food waste disposal containers shall be constructed to prevent vermin and insect infestation.

(i) All food waste disposal containers used within a camp car shall be emptied after each meal, or at least every four hours, whichever period is less.

(ii) All food waste disposal containers used outside a camp car shall be located to prevent offensive odors from entering the sleeping quarters.

(5) When separate kitchen or dining hall car is provided, there must be a closeable door between the living or sleeping quarters into a kitchen or dining hall car.

(d) *Food handling.* (1) All food service facilities and operations for occupants of a camp car by the railroad or its contractor(s) or subcontractor(s) shall be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed must be wholesome, free from spoilage, and must be processed, prepared, handled, and stored in such a manner as to be protected against contamination. *See* § 228.323, Potable water, generally.

(2) No person with any disease communicable through contact with food or a food preparation item may be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or a material used therein, in a kitchen or dining facility operated in or in connection with a camp car.

§ 228.327 Waste collection and disposal.

(a) *General disposal requirements.* All sweepings, solid or liquid wastes, refuse, and garbage in a camp must be removed in such a manner as to avoid creating a menace to health and as often as necessary or appropriate to maintain a sanitary condition.

(b) *General waste receptacles.* Any exterior receptacle used for putrescible solid or liquid waste or refuse in a camp shall be so constructed that it does not leak and may be thoroughly cleaned and maintained in a sanitary condition. Such a receptacle must be equipped with a solid tight-fitting cover, unless it can be maintained in a sanitary condition without a cover. This requirement does not prohibit the use of receptacles designed to permit the maintenance of a sanitary condition without regard to the aforementioned requirements.

(c) *Food waste disposal containers provided for the interior of camp cars.* An adequate number of receptacles constructed of smooth, corrosion resistant, easily cleanable, or disposable materials, must be provided and used for the disposal of waste food. Receptacles must be provided with a solid tight-fitting cover unless sanitary conditions can be maintained without use of a cover. The number, size, and location of such receptacles must encourage their use and not result in overfilling. They must be emptied regularly and maintained in a clean, safe, and sanitary condition.

§ 228.329 Housekeeping.

(a) A camp car must be kept clean to the extent allowed by the nature of the work performed by the occupants of the camp car.

(b) To facilitate cleaning, every floor, working place, and passageway must be kept free from protruding nails, splinters, loose boards, and unnecessary holes and openings.

§ 228.331 First aid.

(a) An adequate first aid kit must be maintained and made available for occupants of a camp car for the emergency treatment of an injured person.

(b) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked at least weekly when the camp car is occupied to ensure that the expended items are replaced. The first aid kit shall contain, at a minimum, the following:

(1) Two small gauze pads (at least 4×4 inches);

(2) Two large gauze pads (at least 8×10 inches);

(3) Two adhesive bandages;

(4) Two triangular bandages;

(5) One package of gauge roller bandage that is at least two inches wide;

(6) Wound cleaning agent, such as sealed moistened towelettes;

(7) Two elastic wraps;

(8) Five antibiotic ointment packages;

(9) Two packets of aspirin;

(10) Two hydrocortisone ointment packets;

(11) One pair of scissors;

(12) One set of tweezers;

(13) One roll of adhesive tape;

(14) Two pairs of latex gloves;

(15) One resuscitation mask; and

(16) One first aid instruction booklet.

§ 228.333 Repairs.

A railroad shall, within 72 hours after notice from the Federal Railroad Administration of noncompliance with this subpart, correct each non-complying condition on the camp car or cease use of the camp car as sleeping quarters for each occupant. In the event that such a condition affects the safety or health of an occupant, such as water, cooling, heating, or eating facilities, the railroad must immediately upon notice provide alternative arrangements for

housing and providing food to the employee or MOW worker until the condition adverse to the safety or health of the occupant(s) is corrected.

§ 228.335 Electronic recordkeeping.

(a) Each railroad shall keep records in accordance with § 228.323 pertaining to its compliance with this subpart. Records may be kept either on paper forms provided by the railroad or by electronic means in a manner that conforms with § 228.323.

(b) Records required to be kept shall be made available to the Federal Railroad Administration as provided by 49 U.S.C. 20107.

Appendix A to Part 228 [Amended]

14. The last paragraph of the discussion headed "Sleeping Quarters" in Appendix A to part 228 is removed.

Appendix C to Part 228 [Removed]

15. Appendix C to part 228 is removed.

Issued in Washington, DC, on December 23, 2010.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer, Federal Railroad Administration.

[FR Doc. 2010–32924 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2007–26851]

Federal Motor Vehicle Safety Standard; Engine Control Module Speed Limiter Device

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice grants two separate but similar petitions for rulemaking, one submitted by the American Trucking Associations and the other submitted by Road Safe America and a group of nine motor carriers (Schneider National, Inc., C.R. England, Inc., H.O. Wolding, Inc., ATS Intermodal, LLC, DART Transit Company, J.B. Hunt Transport, Inc., U.S. Xpress, Inc., Covenant Transport, Inc., and Jet Express, Inc.) to establish a safety standard to require devices that would limit the speed of certain heavy trucks. Based on information received in response to a request for comments,[1] the National Highway Traffic Safety Administration believes that these petitions merit further consideration through the agency's rulemaking process. In addition, because of the overlapping issues addressed in these two petitions, the agency will address them together in a single rulemaking activity.

The National Highway Traffic Safety Administration plans to initiate the rulemaking process on this issue with a Notice of Proposed Rulemaking in 2012. The determination of whether to issue a rule will be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202–366–0098; FAX: 202–366–7002). For legal issues, you may call Mr. Steve Wood, Assistant Chief Counsel for Vehicle Rulemaking and Harmonization, (Phone: 202–366–2992; FAX: 202–366–3820). You may send mail to this official at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2006, the American Trucking Associations (ATA) submitted a petition to the National Highway Traffic Safety Administration (NHTSA) requesting that the agency initiate rulemaking to amend the Federal motor vehicle safety standards to require vehicle manufacturers to install a device to limit the speed of trucks with a gross vehicle weight rating (GVWR) greater than 26,000 pounds to no more than 68 miles per hour (mph). The ATA claimed that reducing speed-related crashes involving trucks is critical to the safety mission of NHTSA, and that these new requirements are needed to reduce the number and severity of crashes involving large trucks.

On September 8, 2006, Road Safe America and a group of nine motor carriers also petitioned the agency to require that manufacturers install a speed limiting device in vehicles with a GVWR over 26,000 pounds and that the devices be set at not more than 68 mph. They also requested that the requirements apply to all trucks manufactured after 1990.

Summary of the Petitions

A detailed discussion of the two petitions can be found in the request for comments notice. Items specific to NHTSA include the following requests from ATA:

1. All newly manufactured trucks with a GVWR greater than 26,000 pounds shall be equipped with an electronic control module (ECM) that is capable of limiting the maximum speed of the vehicle.

2. The ECM shall be set at no more than 68 mph by the manufacturer.

3. The ECM should be tamper-resistant, and should be designed in a way that does not allow the speed limiter setting on the ECM to be adjusted to let the vehicle exceed 68 mph.

4. Immediately upon the rule taking effect, manufacturers should be prohibited from setting the ECM speed limiter to a maximum speed of greater than 68 mph. However, this requirement should not take effect earlier than the effective date of a Federal Motor Carrier Safety Administration (FMCSA) rule prohibiting vehicle owners or operators from setting the ECM speed limiter at a level greater than 68 mph for newly manufactured trucks.

5. The effective date for installation of a tamper-resistant ECM should be established with a period of time that will allow manufacturers to undergo a systems integration process. The change to the engine ECM may affect other devices on the vehicle; therefore, manufacturers need some time to ensure that the vehicle functions properly. ATA encourages NHTSA to seek information from manufacturers to determine the length of time necessary to come into compliance with the rule.

6. An appropriate tolerance to accommodate variations in manufacturing, wear, and maintenance throughout the lifecycle of the vehicle. For example, the same diameter heavy truck tire but with a different width and sidewall aspect ratio may have a 15–20 revolutions per mile difference which will affect the actual top speed of the truck with a governed speed of 68 mph. ATA recommends that any rulemaking pertaining to this petition reference SAE J678, J862, and J1226 Recommended Practices.

In addition to items similar to those in ATA's petition, Road Safe America also included an item on retrofitting in its petition:

1. Every class 7 and class 8 commercial motor vehicle manufactured after the year 1990 shall be equipped with an electronic engine speed governor.

Summary of Comments

On January 26, 2007, NHTSA and FMCSA published a joint Request for Comments Notice in the **Federal Register** soliciting public comments on

[1] 72 FR 3904; January 26, 2007.

the ATA and Road Safe America petitions. The Department of Transportation Docket Management System received approximately 3,850 comments into Docket No. NHTSA–2007–26851, the majority of which were submitted by private citizens. Of these, many comments supported a regulation that would limit the speed of large trucks to 68 mph, which included comments from trucking fleets and consumer advocacy groups, and others. Other comments submitted by independent owner-operator truckers, a trucking fleet association, and private citizens were opposed to the rulemaking requested in the petitions. The remaining comments did not explicitly indicate a position with regard to the petitions.

Comments from private citizens supporting the petitions include responses from individuals who were involved in crashes with heavy trucks or had friends/relatives who were involved in crashes with large trucks. The private citizen supporters of the petitions are typically non-truck drivers who stated that they are intimidated by the hazardous driving practices of some truck drivers, such as speeding, tailgating, and abrupt lane changes. These commenters expressed the belief that limiting the speed of heavy trucks to 68 mph will result in safer highways.

Some of the organizations supporting the petition provided similar reasons for their support and the selected comments summarized below cover the range of issues they discussed.

Schneider National, Inc., a major trucking fleet, indicated that its trucks have been speed limited to 65 mph since 1996. According to Schneider's crash data from its own fleet, vehicles without speed limiters accounted for 40 percent of the company's serious collisions while driving 17 percent of the company's total miles. Schneider stated that its vehicles have a significantly lower crash rate than large trucks that are not speed limited or have a maximum speed setting greater than 65 mph.

J.B. Hunt Transport, Inc., another trucking fleet, commented that a differential speed between cars and large trucks will result from trucks being equipped with speed limiters set below the posted speed limit. This speed differential may cause a safety hazard. However, J. B. Hunt believes that the current safety hazard caused by large trucks traveling at speeds in excess of posted limits is a greater safety hazard.

Advocates for Highway and Auto Safety (Advocates) commented that large trucks require 20–40 percent more braking distance than passenger cars and light trucks for a given travel speed. Advocates does not believe that the data in the 1991 report to Congress [2] are still valid because the speed limits posted by the States over the past ten years are much higher than the national posted speed limit of 55 mph that was in effect in 1991.

The Insurance Institute for Highway Safety (IIHS) stated that 97 percent of the occupants that are killed in crashes between heavy trucks and passenger vehicles are passenger vehicle occupants. IIHS stated that on-board electronic engine control modules (ECM) will maintain the desired speed control for vehicles when enforcement efforts are not sufficient due to lack of resources. IIHS stated that there is already widespread use of speed governors by carriers and a mandate will result in net safety and economic benefits.

The Governors Highway Safety Association (GHSA) stated that large trucks are 3 percent of registered vehicles and represent about 8 percent of the total miles traveled nationwide. Also, GHSA believes that it is prudent to consider speed limiting devices since they are currently installed in large trucks and can be adapted to be tamper-resistant. It stated that conventional approaches to vehicle speed control do not provide optimal benefits because of a lack of enforcement resources and too many miles of highway to cover.

Several comments, including those from ATA's Truck Maintenance Council, provided information concerning economic, non-safety benefits that would result from large truck speed limiters. The Truck Maintenance Council stated that an increase of 1 mph results in a 0.1 mpg increase in fuel consumption, and for every 1 mph increase in speed over 55 mph, there is a reduction of 1 percent in tire tread life.

Comments opposing rulemaking that would require speed limiters on large trucks to be set to a maximum speed of 68 mph were received from many independent truck drivers, the Owner-Operator Independent Drivers Association (OOIDA), the Truckload Carriers Association (TCA), and private citizens (non-truck drivers).

OOIDA commented that the 1991 report to Congress [3] is still valid today—there is no need to mandate speed limiters because the target population (high speed crashes) is still small compared to the total number of truck crashes. According to OOIDA, speed limiters would not have an effect on crashes in areas where the posted speed limit for trucks is 65 mph or below. OOIDA believes that the petitioners are attempting to force all trucks to be speed limited so that the major trucking companies with speed limited vehicles can compete for drivers with the independent trucking operations that have not limited their speeds to 68 mph or below. OOIDA also stated that it is not necessary to set large truck speed limiters at 68 mph to realize most of the economic benefits cited by the petitioners because improved fuel economy and reduced emissions can be achieved with improved truck designs.

TCA commented that a speed differential will be created in many States by the 68-mph speed limit for heavy trucks and a higher speed limit for other vehicles. This speed differential will result in more interaction between cars and trucks and may be an additional safety risk for cars and trucks.

According to comments from CDW Transport, a trucking fleet, speed limiters should be required on passenger vehicles as well as commercial motor vehicles.

Several comments from private citizens and small businesses opposed to the petitions stated that speed is not the only cause of crashes, that weather and highway conditions are also significant factors. There were comments stating that passenger vehicles cause the majority of the crashes between trucks and passenger vehicles. Some comments stated that truck drivers will experience more fatigue with a 68-mph maximum speed, which could result in more crashes; some comments expressed the opinion that State and local law enforcement agencies should enforce the speed of all vehicles on the nation's roads and highways; several comments favored a 75-mph limit for truck speed limiters, instead of 68 mph, to match the highest posted speed limit in the country.

The Truck Manufacturers Association (TMA) provided information concerning the cost of tamper-proof speed limiters for large trucks. TMA estimates a one-time cost of $35 to $50 million would be required to develop ECMs with tamper-resistant speed limiters and a one-time cost of $150 million to $200 million to develop ECMs with tamper-proof speed limiters. With both of these ECM designs, there would be additional costs to make adjustments to the ECM for maximum speed, tire size, and drive axle and transmission gear ratio information.

[2] Comercial Motor Vehicle Speed Control Devices (1991), DOT HS 807 725.

[3] Comercial Motor Vehicle Speed Control Devices (1991), DOT HS 807 725.

Research Review

The agency conducted a preliminary review of research in its evaluation of the merits of these petitions. Along with research conducted by Transport Canada,[4] the agency has considered a DOT Research and Special Programs Administration report published in 2005,[5] and a synthesis of safety practice from the Transportation Research Board of the National Academies published in 2008.[6] Both of these reports indicate that there is a potential for speed limiting devices to decrease crash severity. Both of these documents also contain survey information pertaining to the current fleet usage of these devices and the speed settings of the equipment currently on the road.

Although the currently available studies have been useful in the agency's grant consideration, additional information on this topic is forthcoming. The agency anticipates the publication of a report on the findings of a study being conducted by the Federal Motor Carrier Safety Administration.[7] The main objective of this research is to quantitatively evaluate the safety impact and associated economic benefits of speed limiters in commercial motor vehicles. This analysis is expected to include safety impacts as well as fuel and tire consumption data.

International Speed Limiter Regulations

The European Union has limited the speed of large trucks and buses under its jurisdiction to 62 mph since 1994. In Australia, large trucks have been limited to 62 mph since 1990 with a 56-mph limit for road trains (a road train consists of a tractor pulling multiple trailers).[8] The European Union and Australia cited economic and safety benefits as the reasons for adopting large truck speed limiter legislation and regulation.

More recently, Japan and the Canadian provinces of Ontario and Quebec have also mandated speed limiters. Japan limited large trucks to 56 mph in 2003. Quebec and Ontario limited the speed of large trucks to 65 effective January 1, 2009, although they did not begin assessing fines until July 1, 2009.[9] In addition to economic and safety benefits, the two provinces cited environmental benefits.

The granting of the petitions from ATA and Road Safe America, however, does not mean that a final rule will be issued. The determination of whether to issue a rule is made after study of the requested action and the various alternatives in the course of the rulemaking proceeding, in accordance with statutory criteria.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued: December 27, 2010.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. 2010–33057 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–59–P

[4] The reports are available at *http://www.tc.gc.ca/eng/roadsafety/safevehicles-motorcarriers-speedlimiter-index-251.htm.*

[5] "Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways," MBTC 2048.

[6] "Safety Impacts of Speed Limiter Device Installation on Commercial Trucks and Buses," Available at *http://www.trb.org/Main/Blurbs.aspx.*

[7] Information on this study is available at *http://www.fmcsa.dot.gov/facts-research/art-research-Safety-Effectiveness-of-Speed-Limiters.htm.*

[8] The *Australian Design Rule (ADR) 65/00—Maximum Road Speed Limiting for Heavy Goods Vehicles and Heavy Omnibuses* specifies the devices or systems used to limit the maximum road speed of heavy goods vehicles. For additional information, go to *http://www.tmr.qld.gov.au/~/media/7ebc7a9d-b94b-4ee8-bf82-aab41c743252/speed_limiter_requirements.pdf.*

[9] ONTARIO AND QUÉBEC MANDATORY HEAVY TRUCK SPEED LIMITERS—FACT SHEET. Available at *http://www.mtq.gouv.qc.ca/portal/page/portal/Librairie/Publications/en/camionnage/limiteurs_vitesse/speed_limiters_note_info.pdf.*

Notices

Federal Register

Vol. 76, No. 1

Monday, January 3, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendation

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States adopted the attached recommendation at its Fifty-third Plenary Session. The recommendation addresses issues relating to Federal agency procedures regarding consultation with State and local governments and for considering State interests in rulemakings that may result in the preemption of State law.

FOR FURTHER INFORMATION CONTACT: Emily F. Schleicher, Designated Federal Officer, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 591–596. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)). At its Fifty-third Plenary Session, held December 9 and 10, 2010, the Assembly of the Administrative Conference of the United States adopted the attached recommendation. For further information about the Conference and its activities, *see http://www.acus.gov.*

Recommendation 2010–1, "Agency Procedures for Considering Preemption of State Law," addresses issues relating to agency procedures for complying with Federal requirements regarding consultation with State and local governments and for considering State interests in rulemakings that may result in the preemption of State law. The goal of the recommendation is not to favor or disfavor preemption, but to improve agency procedures in potentially preemptive rulemakings. The recommendation reiterates a previous Conference recommendation that Congress clearly state its preemptive intent in the text of the statutes it charges Federal agencies with implementing. It recommends that agencies formulate appropriate internal procedures to ensure consultation with representatives of State interests and to ensure that agencies evaluate the authority and basis asserted in support of a preemptive rulemaking. It seeks to increase transparency regarding internal agency policies and recommends ways to improve external mechanisms for enforcing the applicable Federal requirements.

The full text of the recommendation is set out in the Appendix below. The recommendation will be transmitted to affected agencies and to appropriate committees of the United States Congress. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendation must be made by the affected agencies or by Congress.

The Administrative Conference ceased operations in 1995 due to termination of funding, but was re-established in 2010, and the Council of the revived Administrative Conference held its first meeting in August 2010. The December 2010 Plenary Session was the first held after the resumption of operations. Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register**. The research report on which Recommendation 2010–1 is based and a complete listing of past recommendations and statements are available at *http://www.acus.gov.*

The transcript of the Plenary Session is available for public inspection at the Conference's offices at 1120 20th Street, NW., Suite 706 South, Washington, DC.

Authority: 5 U.S.C. 591–96.

Dated: December 27, 2010.

Jonathan R. Siegel,

Director of Research and Policy.

Appendix—Recommendations of the Administrative Conference of the United States

Recommendation 2010–1, Agency Procedures for Considering Preemption of State Law (Adopted December 9, 2010)

Preamble

Presidents Reagan and Clinton both issued executive orders mandating executive branch agencies,[1] and urging independent agencies,[2] to take certain measures to ensure proper respect for principles of federalism. Executive Order 13132, "Federalism," issued by President Clinton on August 4, 1999 (the "Order"),[3] is still in effect today, and is an amended version of President Reagan's Executive Order on Federalism, Executive Order 12612.[4] The Order identifies federalism principles that bear consideration in policymaking and specifies procedures for intergovernmental consultation, emphasizing consultations with State and local governments and enhanced sensitivity to their concerns. The Order requires agencies to have "an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." [5] The Order requires agencies to "provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings" whenever an agency proposes to preempt State law through adjudication or rulemaking.[6] It establishes specific procedures for "any regulation that has federalism implications and that preempts State law," [7] requiring agencies to consult with State and local officials "early in the process of developing the proposed regulation," [8] and to prepare a federalism impact statement ("FIS").[9]

[1] Exec. Order No. 13,132, § 1(c).

[2] *Id.* at § 9.

[3] Exec. Order No. 13,132, 3 CFR 206 (2000), *reprinted in* 3 U.S.C. 301 (2006).

[4] President Reagan's Executive Order on Federalism adopted, nearly verbatim, ACUS recommendations. *Compare* Exec. Order No. 12,612, 3 CFR 252, §§ 4(d) & (e) (1988), *reprinted in* 5 U.S.C. 601 (1994), with Administrative Conference of the United States, Recommendation No. 84–5, *Preemption of State Regulation by Federal Agencies* ¶¶ 4, 5 (1984).

[5] Exec. Order No. 13,132, § 6(a). The consultation process must involve "elected officials of State and local governments or their representative national organizations." *Id.* at §§ 1(d), 6(a).

[6] *Id.* at § 4(e).

[7] *Id.* at § 6(c).

[8] *Id.* at § 6(c)(1).

[9] *Id.* at § 6(c)(2) (requiring a FIS for any regulation "that has federalism implications and that preempts

Continued

Individual agencies are responsible for implementing Executive Order 13132, and the Office of Information and Regulatory Affairs ("OIRA"), located within the Office of Management and Budget ("OMB"), has issued procedural guidelines on "what agencies should do to comply with the Order and how they should document that compliance to OMB." [10] These Federalism Guidelines provide that each agency and department should designate a federalism official charged with: (1) Ensuring that the agency considers federalism principles in its development of regulatory and legislative policies with federalism implications; (2) ensuring that the agency has an accountable process for meaningful and timely intergovernmental consultation in the development of regulatory policies that have federalism implications; and (3) providing certification of compliance to OMB. The federalism official must submit to OMB "a description of the agency's consultation process," [11] that "indicate[s] how the agency identifies those policies with federalism implications and the procedures the agency will use to ensure meaningful and timely consultation with affected State and local officials." [12] For any draft final regulation with federalism implications submitted for OIRA review under Executive Order 12866, the federalism official must certify that the requirements of Executive Order 13132 concerning both the evaluation of federalism policies and consultation have been met in a meaningful and timely manner.[13]

President Obama's official policy on preemption, articulated in a May 20, 2009 presidential "Memorandum for Heads of Executive Departments and Agencies" ("Preemption Memorandum"), provides that "[p]reemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption." [14] It specifically admonishes department and agency heads to cease the practice of including preemption statements in the preamble to a regulation without including it in the codified regulation. And it further directs agencies to include preemption provisions in codified regulations only to the extent "justified under legal principles governing preemption, including the principles outlined in Executive Order 13132." Finally, the Preemption Memorandum requests that agencies conduct a 10-year retrospective review of regulations including preemption statements, whether in the preamble or the codified regulation, "in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption."

An empirical evaluation of agency practices reveals that compliance with the preemption provisions of Executive Order 13132 has been inconsistent, although President Obama's Preemption Memorandum has effectuated a meaningful shift in preemption policies within a number of agencies. This evaluation was based on statistical analysis of agency rulemaking practices, on particular examples of agency rulemakings, on recent interviews with officials at the National Highway Traffic Safety Administration ("NHTSA"), Food and Drug Administration ("FDA"), Office of the Comptroller of the Currency ("OCC"), Consumer Product Safety Commission ("CPSC"), Federal Trade Commission ("FTC"), and Environmental Protection Agency ("EPA"), and on consideration of legislative changes to statutes relevant to agency preemption and an independent review of the agencies' respective rulemaking dockets and intervention in litigation.

There appears to be consensus that the requirements of the preemption provisions of Executive Order 13132—including consultation with the States and the requirement for "federalism impact statements"—are sound. But compliance with these provisions has been inconsistent, and difficulties have persisted across administrations of both political parties. A 1999 GAO Report identified only five rules—out of a total of 11,000 issued from April 1996 to December 1998 [15]—that included a federalism impact assessment.[16] Case studies of particular rulemaking proceedings have revealed failures to comply with Executive Order 13132.[17] In August 2010, reflecting continued concern with agency practices in this area, the ABA House of Delegates adopted a recommendation developed by the ABA Task Force on Federal Preemption of State Tort Laws, aimed at improving compliance with the preemption provisions of Executive Order 13132.[18]

This Administrative Conference Recommendation is intended to improve agency procedures for implementing the preemption provisions of Executive Order 13132 and to increase transparency regarding internal agency policies and external enforcement mechanisms designed to ensure compliance with those provisions. The goal is not to favor or disfavor preemption, but to improve agency procedures in potentially preemptive rulemakings. The Recommendation is also intended to facilitate Federal agency consultation with State representatives, such as the "Big Seven," a group of nonpartisan, non-profit organizations composed of State and local government officials,[19] and, conversely, to facilitate State officials' awareness of and responsiveness to, opportunities to consult with Federal officials and to comment in regulatory proceedings that may have preemptive effect. Improved communication on preemption issues would result if State and local government officials or their representative organizations availed themselves of opportunities to become aware of whether Federal agencies are engaging in potentially preemptive rulemaking proceedings, for example, by monitoring the **Federal Register** or using relevant Internet dashboards, such as are available at *http://www.reginfo.gov.* Agencies can ensure that these tools are optimally useful to State representatives by clearly posting relevant information on their individual Web sites and providing appropriate information for inclusion in the semiannual Unified Agenda. Finally, this Recommendation is aimed at both executive branch and independent agencies that engage in preemptive rulemaking, with the recognition that the executive directives described above bind the former and urge voluntarily compliance by the latter.

The Conference recognizes the danger of encumbering the rulemaking process with too many formal requirements. Therefore, in crafting this Recommendation, the Conference has remained mindful of the continuing validity of its previous

State law"); *id.* at § 1(a) (defining "federalism implications").

[10] Memorandum from Jacob J. Lew, Director, Office of Mgmt. & Budget, to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Guidance for Implementing E.O. 13132, "Federalism" (Oct. 28, 1999), at 2, *available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/m00–/02.pdf* (last visited October 29, 2010) ("Federalism Guidelines").

[11] Exec. Order No. 13,132, § 6(a); Federalism Guidelines 2.

[12] Federalism Guidelines 4–5.

[13] Exec. Order No. 13,132, § 8(a).

[14] Memorandum for the Heads of Executive Departments and agencies (May 20, 2009), 74 FR 24,693, 24,693–94 (May 22, 2009), *available at http://www.gpo.gov/fdsys/pkg/FR–2009–05–22/pdf/E9–12250.pdf#page=1* (last visited October 29, 2010).

[15] Executive Order 12612 was in effect during this time period.

[16] U.S. General Accounting Office, GAO/T–GGD–99–93, Implementation of Executive Order 12612 in the Rulemaking Process 1 (1999). The exact number of federalism impact assessments during this period is in some doubt but appears to be quite small. *See* Nina A. Mendelson, *Chevron and Preemption,* 102 *Mich. L. Rev.* 737, 784 n.192 (2004) (reporting identification of 9 federalism impact assessments from the fourth quarter of 1998); *see also id* at 783–84 (demonstrating that federalism impact statements are relatively rare and of "poor quality"). Of course, many rules do not require a federalism impact assessment. The number of rules that *should* have included one is unknown, but the very small number that did suggests that agencies were "not implementing the order as vigorously as they could." GAO report, *supra,* at 13.

[17] *See* Catherine M. Sharkey, *Federalism Accountability:* "*Agency Forcing*" *Measures,* 58 Duke L.J. 2125, 2131–439 (2009) (analyzing several rulemaking proceedings in which an agency's notice of proposed rulemaking stated that a rule would have no federalism impact, but in which the agency stated that the final rule had preemptive effect, in some cases without preparing a federalism impact statement or consulting with state officials); *see also* Nina A. Mendelson, *A Presumption Against Agency Preemption,* 102 Nw. L. Rev. 695, 719 (2008) (reporting results from a further, 2006 study of preemptive rules, which disclosed that, out of six preemptive rulemakings studied, only three contained federalism impact analysis, and only one of the analyses "went beyond stating either that the agency concluded that it possessed statutory authority to preempt or that the document had been made available for comment, including to state officials").

[18] American Bar Association House of Delegates, Resolution 117, *available at http://www.abanow.org/2010/07/am-2010-117/* (last visited Nov. 2, 2010).

[19] The Big Seven include the Council of State Governments, the National Governors Association, the National Conference of State Legislatures, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the International City/County Management Association.

Recommendation aimed at reducing "ossification" of the regulatory process.[20] The Conference recognizes, however, that certain principles, including those embodied in the preemption provisions of Executive Order 13132, are sufficiently important to warrant systematic consideration by agencies engaging in rulemaking. The following Recommendation has accordingly been structured both to encourage compliance with existing executive directives and increase the efficiency of internal agency processes designed to ensure such compliance.

Recommendation

1. The Conference reiterates its previous, related recommendation that "Congress should address foreseeable preemption issues clearly and explicitly when it enacts a statute affecting regulation or deregulation of an area of conduct." [21]

Internal Procedures for Compliance With the Preemption Provisions of Executive Order 13132

2. Agencies that engage in rulemaking proceedings that may have preemptive effect on State law should have internal written guidance to ensure compliance with the preemption provisions of Executive Order 13132, which should describe:

a. How the agency determines the need for any preemption;

b. How the agency consults with State and local officials concerning preemption; and

c. How the agency otherwise ensures compliance with the preemption provisions of Executive Order 13132.

3. Agencies should post their internal guidance for compliance with the preemption provisions of Executive Order 13132 on the Internet or otherwise make publicly available the information contained therein.

4. Agencies should have an oversight procedure to improve agency procedures for implementing the preemption provisions of Executive Order 13132. This procedure should include an internal process for evaluating the authority and basis asserted in support of a preemptive rulemaking. The agency should provide a reasoned basis, with such evidence as may be appropriate, that supports its preemption conclusion.

Updated Policies To Ensure Timely Consultation With State and Local Interests Concerning Preemption

5. Agencies should have a consultation process that contains elements such as the following:

a. Agencies should use an updated contact list for representatives of State interests, including but not limited to the "Big Seven." The Administrative Conference will maintain such a list for use by agencies.

b. Agencies should maintain some form of regularized personal contact in order to build relationships with representatives of State interests.

c. Agencies should disclose to the public when they meet with the representatives of State interests in the course of rulemaking proceedings that may preempt State law. The disclosure should include the identity of the organization(s) or institution(s) that participate and the subject matter of the discussion.

d. Agencies should reach out to appropriate State and local officials early in the process when they are considering preemptive rules. Such outreach should, to the extent practicable, precede issuance of the notice of proposed rulemaking.

6. Agencies should establish contact with organizations and State and local regulatory bodies and officials that have relevant substantive expertise or jurisdiction.

7. Agencies should adopt, as one component of their notice practice, a procedure for notifying State attorneys general when they are considering rules that may have preemptive effect. This may be achieved via direct communication with State attorneys general and by contacting an appropriate representative organization such as, for example, the National Association of Attorneys General.

Actions by OIRA/OMB To Improve the Process

8. OIRA/OMB should request agencies to post on their open government Web sites a summary of the agencies' responses to the directive contained in the Preemption Memorandum to conduct a 10-year retrospective review of preemptive rulemaking.

9. OIRA/OMB should update its Federalism Guidelines with respect to preemption.

10. OIRA should include reference to Executive Order 13132 in Circular A–4.[22]

[FR Doc. 2010–32985 Filed 12–30–10; 8:45 am]

BILLING CODE 6110–01–P

[20] Administrative Conference of the United States, Recommendation No. 93–4, *Improving the Environment for Agency Rulemaking* (1993).

[21] Administrative Conference of the United States, Recommendation No. 84–5, *Preemption of State Regulation by Federal Agencies* (1984).

[22] Office of Info. & Regulatory Affairs, Circular A–4 on Regulatory Analysis (2003), *available at http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf* (last visited October 15, 2010).

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0041]

Pioneer Hi-Bred International, Inc.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered To Produce Male Sterile/Female Inbred Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for corn designated as DP–32138–1, which has been genetically engineered to produce male sterile/female inbred plants for the generation of hybrid corn seed that is non-transgenic. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether this genetically engineered corn is likely to pose a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before March 4, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0041* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0041, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0041.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Coker, Regulatory Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5720, e-mail: *richard.s.coker@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck

at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.* Those documents are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/08_33801p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/08_33801p_dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/08_33801p_dpra.pdf.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 08–338–01p) from Pioneer Hi-Bred International, Inc. (Pioneer) of Johnston, IA, seeking a determination of nonregulated status for corn (*Zea mays* L.) designated as DP–32138–1, which has been genetically engineered to produce male sterile/female inbred plants for the generation of hybrid corn seed that is non-transgenic, stating that corn event DP–32138–1 is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, the controlled expression of a seed color marker gene and pollen fertility and sterility genes allows for the generation of red transgenic seed for seed increase of male sterile-female inbred lines and for the production of non-transgenic fertile pollen for use in non-transgenic hybrid commercial seed production. Corn event DP–32138–1 is currently regulated under 7 CFR part 340. Interstate movements and field tests of corn event DP–32138–1 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These data are used by APHIS to determine if the new variety poses a plant pest risk. Pioneer has petitioned APHIS to make a determination that corn event DP–32138–1 shall no longer be considered a regulated article under 7 CFR part 340.

In section 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if corn event DP–32138–1 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Pioneer, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of corn event DP–32138–1 and it would continue to be a regulated article, or (2) grant nonregulated status to corn event DP–32138–1 in whole.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for corn event DP–32138–1. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject corn line, and the plant pest risk assessment. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of corn event DP–32138–1 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of December, 2010 .

Gregory L. Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–33083 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Environmental Impact Statement; Withdrawal

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal of intent to prepare an environmental impact statement.

SUMMARY: The United States Department of Agriculture, Forest Service, Prescott National Forest, is withdrawing the March 2, 2010, **Federal Register** notice (75 FR 9388) which announced their intent to prepare an Environmental Impact Statement in accordance with the National Environmental Policy Act,

42 U.S.C. 4321 (NEPA), to analyze the environmental impacts of vegetation management treatments in the Prescott Basin area. The original proposal included vegetation treatments to reduce fuels exceeding 9″ in diameter in Mexican Spotted Owl (MSO) Protected Activity Centers. This proposal would have been in conflict with the MSO recovery guidelines that had been incorporated into the Prescott National Forest's Land and Resource Management Plan. Subsequently the Forest Service entered into a new consultation with the United States Fish and Wildlife Service regarding the MSO and other threatened or endangered species. During this period of re-consultation, the responsible official on Prescott National Forest has determined that it would be unwise to pursue such vegetation treatments that could result in a negative impact to the MSO. Without these treatments in MSO protected activity centers, it was recognized that significant impacts to the environment would be highly unlikely, and therefore an Environmental Impact Statement would probably not be required and an Environmental Assessment would be prepared.

DATES: This withdrawal of the Notice of Intent is effective on the date of this publication in the **Federal Register**.

ADDRESSES: USDA Forest Service, Prescott National Forest, 344 S Cortez St., Prescott, AZ 86303.

FOR FURTHER INFORMATION CONTACT: Jodi Wetzstein, Prescott National Forest Silviculturalist; 928–443–8041.

Dated: December 20, 2010.

Thomas Klabunde,

Acting Forest Supervisor.

[FR Doc. 2010–33130 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nye/White Pine County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nye/White Pine County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on January 11th, 2011 and will begin at 10 a.m.

ADDRESSES: The meeting will be held in Nye County at the Bureau of Land Management, 1553 S. Erie Main Street, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Jose Noriega, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Ely Ranger District, 825 Avenue E Ely, NV 89301 (775) 289–3031; e-mail *jnoriega@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include: (1) Introductions, getting acquainted; (2) Understand the role of the committee under the Act; (3) Review operational guides; (4) Elect Chairperson; (5) Review and recommend funding allocation for proposed projects; (6) Determine timeframes for the next round of project proposals; and (7) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 1, 2010.

Steven Williams,

Designated Federal Official.

[FR Doc. 2010–32535 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee will meet in Flagstaff, Arizona, to finalize the Project Submission Form, Project Evaluation Checklist, and discuss any additional last minute items to prepare to hear proposals in the future. No proposals will be heard at this meeting.

DATES: The meeting will be held January 27, 2011, beginning at 1 p.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held in the Ponderosa Room of the Coconino County Health Department, 2625 N. King St., Flagstaff, Arizona 86004. Send written comments to Brady Smith, RAC Coordinator, Coconino Resource Advisory Committee, c/o Forest Service, USDA, 1824 S. Thompson St., Flagstaff, Arizona 86001 or electronically to *bradysmith@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Brady Smith, Coconino National Forest, (928) 527–3490.

SUPPLEMENTARY INFORMATION: Agenda items for this meeting include (1) Public Comment Period; (2) Project Submission Form discussion and finalization; (3) Project Evaluation Checklist discussion and finalization. The meeting is open to the public.

Dated: December 27, 2010.

Paul Flanagan,

Acting Forest Supervisor, Coconino National Forest.

[FR Doc. 2010–33095 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, January at the USDA Whitten Building. The purpose of the Council's meeting is to discuss finalizing their 2010 annual accomplishment report, recommendations for the Secretary of Agriculture, develop the 2011 plan of work, hear from some of the Urban and Community Forestry grant recipients on completed grant findings, and hear public input related to urban and community forestry.

DATES: The meeting will be held on January 26 and 27, 2011, 9 a.m. to 5 p.m. or until Council business is completed.

ADDRESSES: The meeting will be held at the USDA Whitten Building, 12th and Jefferson Drive, SW., Washington, DC 20250. Phone: 202–205–1054.

Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Visitors are encouraged to call ahead to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Mary Dempsey, Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

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

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Mary Dempsey to be placed on the meeting attendance list. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, *e-mail: nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting. Public comments will be compiled and provided to the Secretary of Agriculture along with the Council's recommendations.

Dated: December 27, 2010.

Robin L. Thompson,

Associate Deputy Chief, S&PF.

[FR Doc. 2010–33064 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the USDA Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking nominations for individuals to serve on the USDA Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets twice annually to advise GIPSA on the programs and services it delivers under the U.S. Grain Standards Act (USGSA). Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: GIPSA will consider nominations received by February 2, 2011.

ADDRESSES: Submit nominations for the Advisory Committee by completing form AD–755. Nominations may be submitted by:

- *E-Mail: Terri.L.Henry@usda.gov.*
- *Mail:* Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1633–S, Stop 3642, Washington, DC 20250–3642.
- *Fax:* (202) 690–2173.
- *Hand Delivery or Courier:* Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1633–S, Stop 3642, Washington, DC 20250–3642.
- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, telephone (202) 205–8281 or e-mail *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, the Secretary of Agriculture established the Grain Inspection Advisory Committee on September 29, 1981, to provide advice to the GIPSA Administrator on implementation of the USGSA. The current authority for the Advisory Committee expires on September 30, 2015. As specified in the USGSA, each member's term is 3 years and no member may serve successive terms.

The Advisory Committee consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). Members of the Advisory Committee serve without compensation. USDA may reimburse members for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service (*see* 5 U.S.C. 5703).

A list of current Advisory Committee members and other relevant information are available on the GIPSA Web site at *http://www.gipsa.usda.gov.* Under the section "I Want To …" select "Learn about the Advisory Committee."

GIPSA is seeking nominations for individuals to serve on the Advisory Committee to replace nine members and eleven alternate members whose terms will expire in March 2011.

Persons interested in serving on the Advisory Committee or nominating another individual to serve, may contact: Terri L. Henry by telephone at 202–205–8281, by fax at 202–690–2173, or by electronic mail at *Terri.L.Henry@usda.gov* to request Form AD–755. Form AD–755 may also be obtained via GIPSA's Web site at *http://www.gipsa.usda.gov.* Under the section "I Want To * * *" select "Learn about the Advisory Committee," then select Form-AD–755. Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations of the Advisory Committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates is made by the Secretary of Agriculture.

Alan R. Christian,

Acting Administrator,

Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–32774 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1732]

Expansion/Reorganization of Foreign-Trade Zone 202, Los Angeles, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board for authority to reorganize and expand FTZ 202 in the Los Angeles, California area, within and adjacent to the Los Angeles/Long Beach Customs and Border Protection port of entry (FTZ Docket 57–2009, filed 12/11/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 67172–67173, 12/18/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand and reorganize FTZ 202 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, subject to sunset provisions that would terminate

authority on 12/31/2013 for existing Site 11, re-designated Site 16 and re-designated Site 27 and on 12/31/2015 for re-designated Site 22 where no activity has occurred under FTZ procedures before those dates, and subject to a time limit for re-designated Site 19 that will terminate authority on 12/31/2015, subject to extension upon review.

Signed at Washington, DC, this 20th day of December 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–33119 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1734]

Grant of Authority for Subzone Status; Skechers USA, LLC (Distribution of Footwear); Moreno Valley, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the March Joint Powers Authority, grantee of Foreign-Trade Zone 244, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of Skechers USA, LLC, located in Moreno Valley, California, (FTZ Docket 5–2008, filed 2/1/2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 8031, 2/12/2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to footwear warehousing and distribution at the facility of Skechers USA, LLC, located in Moreno Valley, California (Subzone 244A), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of December, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–33115 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1735]

Grant of Authority for Subzone Status, Cummins, Inc. (Distribution of Engine Components); Memphis, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of Cummins, Inc., located in Memphis, Tennessee (FTZ Docket 8–2010, filed 2/4/2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 6636, 2/10/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to engine components warehousing and distribution at the facility of Cummins, Inc., located in Memphis, Tennessee (Subzone 77E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of December 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–33112 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1727]

Grant of Authority for Subzone Status; ThyssenKrupp Steel and Stainless USA, LLC; (Stainless and Carbon Steel Products) Calvert, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the

establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Mobile, grantee of Foreign-Trade Zone 82, has made application to the Board for authority to establish a special-purpose subzone at the stainless and carbon steel products manufacturing facility of ThyssenKrupp Steel and Stainless USA, LLC, located in Calvert, Alabama (FTZ Docket 51–2008, filed 10–1–2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 58535–58536, 10–7–08; 74 FR 38401, 8–3–09; 74 FR 47921, 9–18–09; 75 FR 17692–17693, 4–7–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing of stainless and carbon steel products at the facility of ThyssenKrupp Steel and Stainless USA, LLC, located in Calvert, Alabama (Subzone 82I), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following conditions:

1. Privileged foreign status (19 CFR 146.41) must be elected on all foreign status ferrosilicon, molybdenum and titanium (HTSUS 7202.21, 8102.94, 8108.20 and 8108.90) admitted to the subzone.

2. Approval is for an initial period of five years, subject to extension upon review.

3. ThyssenKrupp shall submit supplemental reporting data, as specified by the Executive Secretary, for the purpose of monitoring by the FTZ staff.

Signed at Washington, DC this 20th day of December 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–33132 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1731]

Grant of Authority for Subzone Status, REC Silicon (Polysilicon and Silane Gas), Moses Lake, Washington

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of Moses Lake Public Corporation, grantee of Foreign-Trade Zone 203, has made application to the Board for authority to establish a special-purpose subzone at the polysilicon and silane gas manufacturing facility of REC Silicon, located in Moses Lake, Washington (FTZ Docket 22–2009, filed 5–21–2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 25488–25489, 5–28–2009; 74 FR 32112, 7–7–2009; 74 FR 46975, 9–14–2009; 74 FR 51128, 10–5–2009; 75 FR 31762–31763, 6–4–2010), a public hearing was held on September 1, 2009 and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing of polysilicon and silane gas at the facilities of REC Silicon, located in Moses Lake, Washington (Subzone 203B), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order.

Signed at Washington, DC, this 20th day of December 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–33122 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1728]

Voluntary Termination of Foreign-Trade Subzone 102A, Ford Motor Corporation, Hazelwood, MO

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on April 27, 1984, the Foreign-Trade Zones Board issued a grant of authority to the St. Louis County Port Authority (grantee of FTZ 102) authorizing the establishment of Foreign-Trade Subzone 102A at the Ford Motor Corporation plant in Hazelwood, Missouri (Board Order 252, 49 FR 19541, 5/8/84);

Whereas, the St. Louis County Port Authority has advised that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 102A (FTZ Docket 66–2010);

Whereas, the request has been reviewed by the FTZ Staff and Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 102A, effective this date.

Signed at Washington, DC, this 20th day of December 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–33125 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2011

The following Sunset Review is scheduled for initiation in February 2011 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Orange Juice from Brazil (A–351–840).	David Goldberger (202) 482–4136

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in February 2011.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in February 2011.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 16, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–33121 Filed 12–30–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year* ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case no.	ITC Case no.	Country	Product	Department contact
A–570–803	731–TA–457–A	PRC	Heavy Forged Hand Tools, Axes & Adzes (3rd Review).	Jennifer Moats (202) 482–5047.
A–570–803	731–TA–457–B	PRC	Heavy Forged Hand Tools, Bars & Wedges (3rd Review).	Jennifer Moats (202) 482–5047.
A–570–803	731–TA–457–C	PRC	Heavy Forged Hand Tools, Hammers & Sledges (3rd Review).	Jennifer Moats (202) 482–5047.
A–570–803	731–TA–457–D	PRC	Heavy Forged Hand Tools, Picks & Mattocks (3rd Review).	Jennifer Moats (202) 482–5047.

DOC Case no.	ITC Case no.	Country	Product	Department contact
A–570–826	731–TA–663	PRC	Paper Clips (3rd Review)	Jennifer Moats (202) 482–5047.
A–403–801	731–TA–454	Norway	Fresh and Chilled Atlantic Salmon (3rd Review)	David Goldberger (202) 482–4136.
C–403–802	701–TA–302	Norway	Fresh and Chilled Atlantic Salmon (3rd Review)	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. *See* 19 CFR 351.218(d)(1)(i). The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: December 20, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–33134 Filed 12–30–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, except for the review of the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China ("PRC") (A–570–890), the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to

release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

If the Department limits the number of respondents selected for individual examination in the administrative review of the antidumping duty order on wooden bedroom furniture from the PRC, it intends to select respondents based on volume data contained in responses to quantity and value questionnaires. Further, the Department intends to limit the number of quantity and value questionnaires issued in the wooden bedroom furniture from the PRC review based on CBP data for U.S. imports classified under the Harmonized Tariff Schedule of the United States ("HTSUS") headings identified in the scope of the order. Since the units used to measure import quantities are not consistent for the HTSUS headings identified in the scope of the order on wooden bedroom furniture from the PRC, the Department will limit the number of quantity and value questionnaires issued based on the import values in CBP data as a proxy for import quantities. Parties subject to the review to which the Department does not send a quantity and value questionnaire may file a response to the quantity and value questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. Additionally, exporters subject to the review to which the Department does not send a quantity and value questionnaire may file a separate rate application or separate rate certification, as appropriate, by the applicable deadline without filing a response to the quantity and value questionnaire.

Opportunity to Request A Review: Not later than the last day of January 2011,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

		Period to be reviewed
Antidumping Duty Proceedings		
Brazil: Prestressed Concrete Steel Wire Strand	A–351–837	1/1/10—12/31/10
India: Prestressed Concrete Steel Wire Strand	A–533–828	1/1/10—12/31/10
Mexico: Prestressed Concrete Steel Wire Strand	A–201–831	1/1/10—12/31/10
South Africa: Ferrovanadium	A–791–815	1/1/10—12/31/10
South Korea:		
Prestressed Concrete Steel Wire Strand	A–580–852	1/1/10—12/31/10
Top-of-the Stove Stainless Steel Cooking Ware[2]	A–580–601	1/1/10—11/16/10
Thailand: Prestressed Concrete Steel Wire Strand	A–549–820	1/1/10—12/31/10
The People's Republic of China:		
Crepe Paper Products	A–570–895	1/1/10—12/31/10
Ferrovanadium	A–570–873	1/1/10—12/31/10
Folding Gift Boxes	A–570–866	1/1/10—12/31/10
Potassium Permanganate	A–570–001	1/1/10—12/31/10
Wooden Bedroom Furniture	A–570–890	1/1/10—12/31/10
Countervailing Duty Proceedings		
South Korea: Top-of-the-Stove Stainless Steel Cooking Ware[3]	C–580–602	1/1/10—11/21/10
The People's Republic of China: Certain Oil Country Tubular Goods	C–570–944	1/20/10—12/31/10
Circular Welded Carbon Quality Steel Line Pipe	C–570–936	1/1/10—12/31/10
Suspension Agreements		
Mexico: Fresh Tomatoes	A–201–820	1/1/10—12/31/10
Russia: Certain Cut-to-Length Carbon Steel Plate	A–821–808	1/1/10—12/31/10

[2] The antidumping duty order on Top-of-the Stove Stainless Steel Cooking Ware was revoked due to sunset review effective November 17, 2010.

[3] The countervailing duty order on Top-of-the Stove Stainless Steel Cooking Ware was revoked due to sunset review effective November 22, 2010.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[4] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who

[1] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when the Department is closed.

[4] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3508 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of January 2011. If the Department does not receive, by the last day of January 2011, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 20, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–33123 Filed 12–30–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg and Joshua Morris, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0588 and (202) 482–1779, respectively.

Background

On November 10, 2010, the Department of Commerce ("the Department") initiated an investigation of multilayered wood flooring from the People's Republic of China ("PRC"). *See Multilayered Wood Flooring From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 75 FR 70719 (November 18, 2010) ("*Initiation Notice*"). Currently, the preliminary determination is due no later than January 14, 2011.

Postponement of Due Date for Preliminary Determination

Under section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the "Act"), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until no later than the 130th day after the date on which the administering authority initiates an investigation, if the Department determines that the parties are cooperating and additional time is necessary to make the preliminary determination because the case is extraordinarily complicated. The Department solicited and received comments from parties, and concludes that concerned parties are cooperating. The Department further finds that additional time is required because the number of alleged manufacturers, producers, and exporters listed in the Petition [1] has complicated the Department's selection of the firms to individually investigate. *See* section 703(c)(1)(B)(i)(IV) of the Act.

Moreover, since the *Initiation Notice,* the Department has concluded it cannot use U.S. Customs and Border Protection data for respondent selection. Rather, it is appropriate to solicit information about the quantity and value of subject merchandise sales from the firms named in the Petition. Therefore, respondent selection is extraordinarily complicated due to the large number of companies from which the Department is gathering quantity and value information. Thus, the Department is extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated (*i.e.,* March 20, 2011). However, March 20, 2011, falls on a Sunday, and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, Federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary determination is now no later than Monday, March 21, 2011.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f).

Dated: December 27, 2010.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–33133 Filed 12–30–10; 8:45 am]

BILLING CODE 3510–DS–P

---

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Multilayered Wood Flooring from the People's Republic of China, dated October 21, 2010 ("Petition").

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 101227631–0630–01]

Summer Undergraduate Research Fellowships (SURF) NIST Gaithersburg and Boulder Programs; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the following programs are soliciting applications for financial assistance for FY 2011: (1) The NIST Gaithersburg Summer Undergraduate Research Fellowship Programs, and (2) the NIST Boulder Summer Undergraduate Research Fellowship Programs. Each program will only consider applications that are within the scientific scope of the program as described in this notice and in the detailed program descriptions found in the Federal Funding Opportunity (FFO) announcement for these programs. Please note that due to a change in Department of Commerce policy, in future years these programs will be announced only on *http://www.grants.gov;* they will not be announced in the **Federal Register**.

DATES: See below.

ADDRESSES: See below.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards–11.609.

Summer Undergraduate Research Fellowships (SURF) NIST Gaithersburg and Boulder Programs

Program Description: NIST is one of the nation's premiere research institutions for the physical and engineering sciences and, as the lead Federal agency for technology transfer, it provides a strong interface between government, industry and academia. NIST embodies a science culture, developed from a large and well-equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places and enables the Center for Nanoscale Science and Technology (CNST), Engineering Laboratory (EL), Information Technology Laboratory (ITL), Material Measurement Laboratory (MML), NIST Center for Neutron Research (NCNR), and Physical Measurement Laboratory (PML), to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment.

The *SURF NIST Gaithersburg Programs* are soliciting applications in the areas of physics, chemistry, biology, materials science, nanotechnology, neutron research, engineering, mathematics, and computer science as described in the Federal Funding Opportunity. The *SURF NIST Boulder Programs* are soliciting applications in the areas of physics, chemistry, biology, engineering, materials science, mathematics, and computer science as described in the Federal Funding Opportunity.

Applications for the Gaithersburg and Boulder programs are separate. Application to one program does not constitute application to the other, and applications will not be exchanged between the Gaithersburg and Boulder programs. If applicants wish to be considered at both sites, two separate applications must be submitted.

Both SURF programs provide an opportunity for the NIST laboratories and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The objective of the SURF programs is to build a mutually beneficial relationship among the student, the institution, and NIST. The programs are conducted in English and provide research opportunities for students to work with internationally known NIST scientists, to expose them to cutting-edge research and promote the pursuit of graduate degrees in science and engineering. It is expected that the students in the program will have a proficiency in writing and speaking English, the ability to live and work with others, a commitment to honesty, and an interest in learning new things and using their own innovativeness to develop new science. Safety is a top priority at NIST. Students participating in the SURF program will be expected to be safety-conscious, to attend NIST safety training, and to comply with all NIST safety policies and procedures.

The *SURF NIST Gaithersburg and Boulder Program* Directors will work with appropriate department chairs, outreach coordinators, and directors of multi-disciplinary academic organizations to identify outstanding undergraduates (including graduating seniors) who would benefit from off-campus summer research in a world-class scientific environment.

CNST, EL, ITL, MML/NCNR and PML SURF NIST Gaithersburg Programs

DATES: All *SURF NIST Gaithersburg Program* applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on February 15, 2011.

ADDRESSES: For all *SURF NIST Gaithersburg Programs,* paper applications must be submitted to: Ms. Anita Sweigert, Administrative Coordinator, SURF NIST Gaithersburg Programs, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400. Electronic applications must be submitted through grants.gov.

FOR FURTHER INFORMATION CONTACT: Program questions should be addressed to Ms. Anita Sweigert, Administrative Coordinator, SURF NIST Gaithersburg Programs, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel: (301) 975–4200, E-mail: *anita.sweigert@nist.gov.* The *SURF NIST Gaithersburg Program* Web site is: *http://www.nist.gov/surfgaithersburg.* All grants related administration questions concerning this program should be directed to Christopher Hunton, NIST Grants and Agreements Management Division at (301) 975–5718 or *christopher.hunton@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov* or the Help Desk at 800–518–4726.

SUPPLEMENTARY INFORMATION

Electronic Access: NIST strongly encourages all applicants to read the Federal Funding Opportunity Notice (FFO) available at *http://www.grants.gov* for complete information about this program and its requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328. The Gaithersburg and Boulder SURF programs will publish separate FFOs on *http://www.grants.gov.*

Funding Availability

Funds budgeted for payments to students under these programs are stipends, not salary. The stipend is an amount that is expected to be provided to the participating student to help defray the cost of living, for the duration of the program, in the Washington National Capital Region. The *SURF NIST Gaithersburg Programs* will not authorize funds for indirect costs or fringe benefits. The table below summarizes the anticipated funding levels from the National Science

Foundation (NSF) to operate our Research Experience for Undergraduates (REU) programs, subject to program renewals and availability of funds. In some programs, anticipated NIST co-funding will supplement the number of awards supported. Program funding will be available to provide for the costs of stipends ($454.54 per week per student), plus travel and lodging (up to $3,500 per student).

Program	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
CNST	$47,400	$18,000	$65,400	~7
EL	92,500	47,500	140,000	~16
ITL	0	40,000	40,000	~5
MML/NCNR	130,000	18,000	31,000	~38
PML	184,000	95,000	279,000	~32

The actual number of awards made under this announcement will depend on the proposed budgets and the availability of funding. The funding instrument will be a cooperative agreement as NIST will be substantially involved in the program due to collaboration with funding recipients in the scope of work. For all *SURF NIST Gaithersburg Programs* described in this notice, NIST expects that individual awards to institutions will range from approximately $3,000 to $70,000. Funding for student housing will be included in cooperative agreements awarded under this notice.

The *SURF NIST Gaithersburg Program* is anticipated to run from May 23, 2011 through August 5, 2011; adjustments may be made to accommodate specific academic schedules (*e.g.,* a limited number of 9-week cooperative agreements).

Statutory Authority: The authority for the *SURF NIST Gaithersburg Program* is 15 U.S.C. 278g–l, which authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute.

Eligibility: NIST's *SURF Gaithersburg Programs* are open to colleges and universities in the United States and its territories with degree-granting programs in materials science, chemistry, nanoscale science, neutron research, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents.

Cost Sharing or Matching: The *SURF Gaithersburg Programs* do not require any cost sharing or matching funds.

Review and Selection Process: All *SURF NIST Gaithersburg Program* proposals must be submitted in accordance with the instructions given in the Federal Funding Opportunity. All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Proposals must include the required forms listed in the FFO, and the following information:

(A) Student Information (student's name and university should appear on all of these documents):

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (it is recommended that students have a G.P.A. of 3.0 or better, out of a possible 4.0);

(3) A statement of motivation and commitment from each student to participate in the 2011 SURF Program, including a description of the student's prioritized research interests;

(4) A resume for each student;

(5) Two letters of recommendation for each student that should address paragraph (A) of the evaluation criteria below; and

(6) Copy of passport, green card, or birth certificate as confirmation of U.S. citizenship or permanent legal resident status for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to the *SURF NIST Gaithersburg Program* or MML/NCNR Sub-program designated by the student as his/her first choice.

The selection process occurs in three rounds. Each *SURF NIST Gaithersburg Program* will have three independent, objective NIST employees, who are knowledgeable in the scientific areas of the program, conduct a technical review of each student/institution packet based on the Evaluation Criteria for the *SURF NIST Gaithersburg Programs* described in this notice. For the first round of evaluations and placement, each technical reviewer will evaluate according to the Evaluation Criteria listed below and provide a score for each student/institution packet. Based on the average of the reviewers' scores, a rank order of the student/institution packets will be prepared within each laboratory.

The SURF Program Director (Selecting Official) for each program, who is a NIST program official who did not participate in the technical evaluations, will then apply the following Selection Factors, which may result in revisions to the rank order: relevance of the student's course of study to the program objectives of the NIST laboratory in which that *SURF NIST Gaithersburg Program* resides as described in the Program Description section of this notice and the corresponding Federal Funding Opportunity, the relevance of the student's statement of commitment to the goals of the *SURF NIST Gaithersburg Program,* fit of the student's interests and abilities to the available projects in that laboratory program, assessment of whether the laboratory experience is a new opportunity for the student which may encourage future postgraduate training, and the availability of funding.

Based on these results, the Program Director (Selecting Official) for each laboratory program will divide the rank ordered student/institution packets into three categories: Priority Funding; Fund if Possible; and Do Not Fund. Student/institution packets placed in the Priority Funding category will be selected for funding in that *SURF NIST Gaithersburg Program,* contingent upon availability of

funds. Student/institution packets placed in the Do Not Fund category will not be considered for funding by any other *SURF NIST Gaithersburg Program.*

Student/institution packets placed in the Fund if Possible Category may be considered for funding at a later time by the category-designating *SURF NIST Gaithersburg Program.* The "category-designating" program is the *SURF NIST Gaithersburg Program* whose Program Director first categorized the applicant packet as "Priority Funding", "Fund if Possible", or "Do Not Fund." This is the same *SURF NIST Gaithersburg Program* which was designated by the student in the application cover sheet as his/her first choice. In the interim, period these students will be released for consideration for funding by the *SURF NIST Gaithersburg Program* designated by the student as his/her second choice. The student's second choice laboratory's SURF Program Director will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice *SURF NIST Gaithersburg Program,* apply the selection factors noted above as applied to that laboratory and arrive at a final rank order of the students available for the second round of selections and placements. Any *SURF NIST Gaithersburg Program* may choose not to participate in the second round, if the Program Director does not see suitable students in the second round appropriate for the available projects. Students not selected during the first or second round are available for the third round of selections.

Students not selected for funding by their first or second choice *SURF NIST Gaithersburg Program,* and students who did not designate a second choice, will then be considered for funding from all *SURF NIST Gaithersburg Programs* that still have slots available in a third round, using the same process as the second round. In making selections for the third round of selections and placement, each *SURF NIST Gaithersburg Program* Director (Selecting Official) will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice *SURF NIST Gaithersburg Program,* the selection factors noted above as applied to that laboratory, and the rank order of the students in this selection round. Any *SURF NIST Gaithersburg Program* may choose not to participate in the third round if there are no slots available. Substitutions for students who decline offers will be made from the remaining pool of ranked students consistent with the program review process.

The final approval of selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and other applicable legal and regulatory requirements. NIST also reserves the right to reject an application where information is uncovered that reflects adversely on an applicant's business integrity, resulting in a determination by the Grants Officer that an applicant is not presently responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

The *SURF NIST Gaithersburg Programs* will retain one copy of each unsuccessful application for three years for recordkeeping purposes, and unsuccessful applicants will be notified in writing. The remaining copies will be destroyed.

Evaluation Criteria: For the *SURF NIST Gaithersburg Programs,* the evaluation criteria are:

(A) *Evaluation of Student's Interest in Participating in the Program, Academic Ability, Laboratory Experience and Advanced Degree Interest:* Evaluation of grade point average in courses relevant to the *SURF NIST Gaithersburg Programs,* career goals, honors and awards, commitment of the student to working in a laboratory environment, and interest in pursuing graduate school.

(B) *Institution's Commitment to Program Goals:* Evaluation of the institution's academic department(s) relevant to the discipline(s) of the student(s).

Each of these factors is given equal weight in the evaluation process.

SURF NIST Boulder Programs

DATES: All SURF NIST Boulder Program applications, paper and electronic, must be received no later than 5 p.m. Mountain Standard Time on February 15, 2011.

ADDRESSES: Paper applications for the *SURF NIST Boulder Program* must be submitted to: Ms. Cynthia Kotary, Administrative Coordinator, SURF NIST Boulder Programs, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3337. Electronic applications must be submitted through *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Program questions should be addressed to Ms. Cynthia Kotary, Administrative Coordinator, SURF NIST Boulder Programs, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3337, Tel: (303) 497–3319, E-mail: *kotary@boulder.nist.gov;* Web site: *http://www.nist.gov/surfboulder/.* All grants related administration questions concerning this program should be directed to Mr. Christopher Hunton, NIST Grants and Agreements Management Division at (301) 975–5718, or *Christopher.hunton@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov* or the Help Desk at 800–518–4726.

SUPPLEMENTARY INFORMATION:

Electronic Access: NIST strongly encourages all applicants to read the Federal Funding Opportunity Notice (FFO) available at *http://www.grants.gov* for complete information about this program and its requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328. The Gaithersburg and Boulder SURF programs will publish separate FFOs on *http://www.grants.gov.*

Funding Availability: Funds budgeted for payments to students under this program are stipends, not salaries. The stipend is an amount that is expected to be provided to the participating student to help defray the cost of living, for the duration of the program, in Boulder, Colorado. The *SURF NIST Boulder Programs* will not authorize funds for indirect costs or fringe benefits. The table below summarizes the anticipated annual funding levels from the National Science Foundation (NSF) to operate the Research Experience for Undergraduates (REU) programs, subject to program renewals and availability of funds. In some programs, anticipated NIST co-funding will supplement the number of awards supported. Program funding will be available to provide for the costs of stipends, plus travel and lodging.

Laboratory	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
PML	$55,500	$75,000	$130,500	~15

Laboratory	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
MML	18,500	25,000	43,500	~5
ITL	7,400	10,000	17,400	~2

The actual number of awards made under this announcement will depend on the proposed budgets and the availability of funding. The funding instrument will be a cooperative agreement as NIST will be substantially involved in the program due to collaboration with funding recipients in the scope of work. NIST expects that individual awards to institutions will range from approximately $3,000 to $70,000. Funding for student housing will be included in the cooperative agreements awarded under this notice.

The *SURF NIST Boulder Programs* are anticipated to run from May 23, 2011 through August 5, 2011; adjustments may be made to accommodate specific academic schedules (*e.g.,* a limited number of 11-week cooperative agreements with the schedule shifted to begin after the regular start in order to accommodate institutions operating on quarter systems).

Statutory Authority: The authority for the *SURF NIST Boulder Program* is 15 U.S.C. 278g–l, which authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute.

Eligibility: The *SURF NIST Boulder Programs* are open to colleges and universities in the United States and its territories with degree-granting programs in physics, chemistry, biology, engineering, materials science, mathematics, or computer science. Participating students must be U.S. citizens or permanent U.S. residents.

Cost Sharing or Matching: The *SURF NIST Boulder Program* does not require any cost sharing or matching funds.

Review and Selection Process: All *SURF NIST Boulder Programs* proposals must be submitted to the Administrative Coordinator listed in the Addresses section above. Proposals must include the required forms listed in the FFO, and the following information:

(A) Student Information (student's name and university should appear on all of these documents):

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (it is recommended that students have a G.P.A. of 3.0 or better, out of a possible 4.0);

(3) A statement of motivation and commitment from each student to participate in the 2011 SURF Program, including a description of the student's prioritized research interests;

(4) A resume for each student;

(5) Two letters of recommendation for each student; and

(6) Copy of passport, green card, or birth certificate as confirmation of U.S. citizenship or permanent legal resident status for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated, with one paragraph of commentary about each student from a dean or department chair that describes why the students would be successful in the SURF Boulder Program.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to a review committee of NIST staff appointed by the SURF NIST Boulder Directors.

First, all applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive proposals will not be reviewed for technical merit, and the applicant will be so notified. The Program will retain one copy of each non-responsive application for three years for record-keeping purposes. The remaining copies will be destroyed.

Second, each SURF student/university packet will be reviewed by at least three independent, objective NIST employees, who are knowledgeable in the scientific areas of the program and are able to conduct a technical review of each student/university packet based on the Evaluation Criteria described in this notice. The normalized scores based on this merit review will be averaged for each student/institution applicant packet, creating a rank order. The Selecting Official, the Special Assistant to the Director of NIST Physical Measurement Laboratory, shall award in the rank order unless a proposal is justified to be selected out of rank order based upon one or more of the following factors: Availability of funding, and balance or distribution of funds by research or technical disciplines.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *SURF NIST Boulder Programs* the evaluation criteria are as follows:

(A) *Evaluation of Student's Academic Ability and Commitment to Program Goals (80%):* Includes evaluation of completed course work; expressed research interest; compatibility of the expressed research interest with SURF NIST Boulder research areas; research skills; grade point average in courses relevant to the *SURF NIST Boulder Programs;* career goals; honors and activities;

(B) *Evaluation of Applicant Institution's Commitment to Program Goals (20%):* Includes evaluation of the institution's academic department(s) relevant to the discipline(s) of the student(s).

The following information applies to all programs announced in this notice:

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696) are applicable to this notice.

Dun and Bradstreet Data Universal Numbering System: On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification

Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS numbers MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS numbers are consistent with the information on the CCR and ASAP.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section B.21 of the Department of Commerce Pre-Award Notification Requirements, 73 FR 7696 (February 11, 2008). Questions about these requirements may be directed to the Chief Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, CD–346, and SURF Program Student Applicant Information have been approved by the Office of Management and Budget (OMB) under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, 0605–0001, and 0693–0042. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, the Food and Drug Administration, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) currently registered with DHHS and performed by entities possessing a current, valid Federal-wide Assurance (FWA) from DHHS, that are appropriately linked to the IRB that approved the protocol. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

Generally, the NIST does not fund research involving human subjects in foreign countries. NIST will consider, however, the use of preexisting tissue, cells, or data from a foreign source on a limited basis if the following criteria are satisfied:

1. The scientific source is considered unique,
2. An equivalent source is unavailable within the United States,
3. An alternative approach is not scientifically of equivalent merit, and
4. The specific use qualifies for an exemption under the Common Rule.

President Obama has issued Executive Order No. 13,505 (74 FR 10667, March 9, 2009), revoking previous Executive Orders and Presidential statements regarding the use of human embryonic stem cells in research. On July 30, 2009, President Obama issued a memorandum directing that agencies that support and conduct stem cell research adopt the "National Institutes of Health Guidelines for Human Stem Cell Research" (NIH Guidelines), which became effective on July 7, 2009, "to the fullest extent practicable in light of legal authorities and obligations." On September 21, 2009, the Department of Commerce submitted to the Office of Management and Budget a statement of compliance with the NIH Guidelines. In accordance with the President's memorandum, the NIH Guidelines, and the Department of Commerce statement of compliance, NIST will support and conduct research using only human embryonic stem cell lines that have been approved by NIH in accordance with the NIH Guidelines and will review such research in accordance with the Common Rule and NIST implementing procedures, as appropriate. NIST will not support or conduct any type of research that the NIH Guidelines prohibit NIH from funding. NIST will follow any additional policies or guidance issued by the current Administration on this topic.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2010 appropriations. Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2011

appropriations. NIST issues this notice subject to the appropriations made available under the current continuing resolution, S. Amend. to H.R. 3081, "Continuing Appropriations Resolution, 2011," Public Law 111–242, as amended by H.J. Res. 101, "Further Continuing Appropriations, 2011," Public Law 111–290; H.J. Res. 105, "Further Continuing Appropriations, 2011," Public Law 111–317; and H.R 3082, "Further Continuing Appropriations, 2011," Public Law 111–322. NIST anticipates making awards for the programs listed in this notice provided that funding for the programs is continued beyond March 4, 2011, the expiration of the current continuing resolution. In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of agency priorities. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: December 27, 2010.

David Robinson,

Associate Director for Management Resources.

[FR Doc. 2010–33075 Filed 12–30–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA60

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 5 to the Golden Crab Fishery Management Plan of the South Atlantic

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

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare an EIS to describe and analyze a range of alternatives for management actions to be included in Amendment 5 to the Golden Crab Fishery Management Plan of the South Atlantic Region (Amendment 5). These alternatives will consider measures to develop a catch share program for the golden crab fishery. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the EIS.

DATES: Written comments on the scope of issues to be addressed in the EIS will be accepted from January 12 to February 14, 5 p.m., Eastern time.

ADDRESSES: You may submit comments, identified by RIN 0648–BA60, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.*
- *Mail:* Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0279" in the keyword search, then select "Send a Comment or Submission." 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.

FOR FURTHER INFORMATION CONTACT: Karla Gore; phone: (727) 824–5305.

SUPPLEMENTARY INFORMATION: The Golden Crab FMP relies on a system of traditional fishery management plus limited access. Traditional fishery management includes: measures to provide biological protection to the resource (escape gaps in traps and no retention of female crabs); gear regulations (allowable gear, requirement for degradable panel, tending requirements, gear identification, and maximum trap size by zone); depth limitations and prohibition of possession of whole fish or fillets of snapper-grouper species; data collection requirements (vessel/fishermen and dealer/processor reporting); and a framework procedure to adjust the management program.

The golden crab fishery resource is not overfished or undergoing overfishing. However, there are underlying social and economic problems resulting from gear conflicts, high regulatory costs, and limited markets. To solve these social and economic problems, managers have increasingly turned to various forms of controlled access or effort limitation. Combining more traditional fishery management measures with controlled access has allowed the Council to solve problems in the golden crab fishery.

The Council is considering development and implementation of a catch share program for golden crab in order to: avoid a derby fishery from developing; place limitations on vessel harvest similar to historical participation; and maintain fishermen harvesting flexibility. Recent information indicates increased participation and renewed interest in participation in the golden crab fishery due to technological improvements that have increased quality, price, and marketability of golden crab.

NMFS, in collaboration with the Council, will develop an EIS to describe and analyze management alternatives to address the management needs described above. Those alternatives will include a "no action" alternative regarding each action.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion

for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the EIS.

Copies of an information packet will be available from NMFS (*see* **ADDRESSES**).

Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the draft EIS (DEIS) and the associated Amendment 5. After the DEIS associated with Amendment 5 is completed, it will be filed with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All meetings will begin at 3 p.m. In addition to Amendment 5, the Council intends to scope additional amendments at this series of meetings. Separate NOIs will be prepared for each amendment. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (*see* **FOR FURTHER INFORMATION CONTACT**).

Monday, January 24, 2011–Hilton New Bern/Riverfront, 100 Middle Street, New Bern, NC 28560; phone 252–638–3585.

Wednesday, January 26, 2011–Crowne Plaza Charleston Airport, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; phone 843–744–4422.

Thursday, January 27, 2011–Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; phone 912–748–8888.

Monday, January 31, 2011–Jacksonville Marriott, 4670 Salisbury Road, Jacksonville, FL 32256; phone 904–296–2222.

Tuesday, February 1, 2011–International Palms Resort, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; phone 321–783–2271.

Thursday, February 3, 2011–Key Largo Grande Resort, 97000 Overseas Resort, Key Largo, FL 33037; phone 305–852–5553.

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

Dated: December 28, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–33099 Filed 12–30–10; 8:45 am]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 24 to the Fishery Management Plan for Snapper Grouper Resources of the South Atlantic

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

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS); notice of scoping meetings; request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare an EIS to describe and analyze a range of alternatives for management actions to be included in an amendment to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). These alternatives will consider measures to establish a rebuilding plan for the red grouper stock, while setting annual catch limits (ACLs), accountability measures (AMs), allocations, maximum sustainable yield (MSY), and optimum yield (OY) for red grouper. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the EIS.

DATES: Written comments on the scope of issues to be addressed in the EIS will be accepted from January 12 to February 14, 5 p.m., eastern time.

ADDRESSES: You may submit comments, identified by RIN 0648–BA52, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.*
- *Mail:* Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0263" in the keyword search, then select "Send a Comment or Submission." 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.

FOR FURTHER INFORMATION CONTACT: Kim Iverson; phone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The red grouper stock in the south Atlantic was assessed through the Southeast, Data, Assessment, and Review (SEDAR) process in 2010. The assessment indicates that the stock is experiencing overfishing and is overfished. Overfishing is a condition when fishing pressure is beyond the allowable level. Overfishing may lead to an overfished condition. A stock is overfished when the biomass is below an identified minimum stock size threshold. Due to low biomass levels, an overfished stock has increased vulnerability to environmental variables and cannot produce the MSY.

As directed by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council and NMFS must implement a rebuilding plan, through an FMP Amendment or proposed regulations, which ends overfishing immediately and provides for rebuilding the fishery. The intent of a rebuilding plan is to increase biomass of overfished stocks to a sustainable level within a specified period of time. A plan should achieve conservation goals, while minimizing to the extent practicable adverse socioeconomic impacts. NMFS notified the Council of the stock status on June 9, 2010; the Magnuson-Stevens Act

specifies that measures to end overfishing and rebuild the stock must be implemented within two years of notification.

A reauthorization of the Magnuson-Stevens Act in 2007 introduced new tools that, when implemented, would end and prevent overfishing in order to achieve the OY from a fishery. The requirements are referred to as ACLs and AMs. An ACL is the level of annual catch of a stock that, if met or exceeded, triggers some corrective action. AMs are management controls to prevent ACLs from being exceeded and to correct overages of ACLs if they occur. Two examples of AMs include an in-season closure if catch approaches the ACL and reducing the ACL by an overage that occurred the previous fishing year. The EIS will include alternatives that would establish ACLs and AMs for red grouper in the South Atlantic region.

The Council and NMFS are also considering a division of the red grouper ACL into sector-ACLs based upon allocation decisions. A "sector" means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include commercial and recreational; the recreational sector may also be divided into for-hire and private recreational groups. The Council and NMFS have determined that sector-ACLs and sector-AMs are important components of red grouper management as each sector differs in scientific and management uncertainty. A range of options will be evaluated in the EIS, including those that base allocation decisions on historical landings.

NMFS, in collaboration with the Council, will develop an EIS to describe and analyze alternatives to address the management needs described above. Those alternatives will include a "no action" alternative for each action.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the EIS.

Copies of an information packet will be available from NMFS (*see* **ADDRESSES**).

After the draft EIS (DEIS) associated with Amendment 24 is completed, it will be filed with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The draft EIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the DEIS and the associated Amendment 24. A **Federal Register** notice will announce the availability of the DEIS associated with this amendment, as well as a 45-day public comment period. The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All meetings will begin at 3 p.m. In addition to Amendment 24, the Council intends to scope additional amendments at this series of meetings. Separate NOIs will be prepared for each amendment. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (*see* **FOR FURTHER INFORMATION CONTACT**).

Monday, January 24, 2011—Hilton New Bern/Riverfront, 100 Middle Street, New Bern, NC 28560; phone 252–638–3585.

Wednesday, January 26, 2011—Crowne Plaza Charleston Airport, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; phone 843–744–4422.

Thursday, January 27, 2011—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; phone 912–748–8888.

Monday, January 31, 2011—Jacksonville Marriott, 4670 Salisbury Road, Jacksonville, FL 32256; phone 904–296–2222.

Tuesday, February 1, 2011—International Palms Resort, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; phone 321–783–2271.

Thursday, February 3, 2011—Key Largo Grande Resort, 97000 Overseas Resort, Key Largo, FL 33037; phone 305–852–5553.

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

Dated: December 28, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–33101 Filed 12–30–10; 8:45 am]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA59

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 21 to the Snapper-Grouper Fishery Management Plan of the South Atlantic

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

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare an EIS to describe and analyze a range of alternatives for management actions to be included in Amendment 21 to the Snapper-Grouper Fishery Management Plan for the South Atlantic Region (Amendment 21). These alternatives will consider several management approaches for limiting effort in the snapper-grouper fishery, including: trip limits, endorsements, cooperatives, catch shares, regional quotas, and State-by-State quotas. The purpose of this amendment is to rationalize effort in the commercial snapper-grouper fishery in order to achieve and maintain optimum yield (OY), prevent overfishing, and rebuild overfished stocks. Rationalizing effort is expected to mitigate some of the problems resulting from derby fishing conditions or at least prevent the condition from becoming more severe. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the EIS.

DATES: Written comments on the scope of issues to be addressed in the EIS will be accepted from January 12 to February 14, 5 p.m., Eastern time.

ADDRESSES: You may submit comments, identified by RIN 0648–BA59, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the

Federal e-Rulemaking Portal *http://www.regulations.gov.*

• *Mail:* Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter "NOAA–NMFS–2010–0278" in the keyword search, then select "Send a Comment or Submission". 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.

FOR FURTHER INFORMATION CONTACT: Karla Gore; phone: (727) 824–5305.

SUPPLEMENTARY INFORMATION: Currently, nine snapper-grouper stocks are undergoing overfishing and five stocks are overfished. The Council and NMFS have implemented numerous regulatory changes in recent years in an effort to end and prevent overfishing and rebuild depleted snapper-grouper stocks. These regulatory measures have resulted in decreases to commercial quotas for several species, which has lead to derby fishing conditions. As a result, the length of time it takes for the quota for some species (*e.g.*, golden tilefish, vermilion snapper, and black sea bass) to be reached, has decreased significantly, resulting in lengthy commercial sector closures.

It is anticipated that, under status quo management, incentives for derby behavior will persist in the snapper-grouper fishery, resulting in continued overcapitalization and derby fishery conditions. The fishery is expected to continue to be characterized by higher than necessary levels of capital investment, increased operating costs, increased likelihood of shortened seasons, reduced at-sea safety, wide fluctuations in domestic snapper-grouper supply and depressed ex-vessel prices, which may lead to deteriorating working conditions and lower profitability for participants.

For these reasons, the Council is considering several management approaches for limiting effort in the snapper grouper fishery, including: trip limits, endorsements, cooperatives, catch shares, regional quotas, and State-by-State quotas.

An NOI was previously published on January 22, 2008 (73 FR 3701) to develop an EIS for Amendment 18 to the Snapper-Grouper FMP to consider alternatives to establish a limited access privilege program for the snapper-grouper fishery. However, the Council postponed consideration of this action to a future amendment.

NMFS, in collaboration with the Council will develop an EIS to describe and analyze management alternatives to address the management needs described above. Those alternatives will include a "no action" alternative regarding each action.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the EIS.

Copies of an information packet will be available from NMFS (*see* **ADDRESSES**).

Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the DEIS and the associated Amendment 21.

After the draft EIS (DEIS) associated with Amendment 21 is completed, it will be filed with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All meetings will begin at 3 p.m. In addition to Amendment 21, the Council intends to scope additional amendments at this series of meetings. Separate NOIs will be prepared for each amendment. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (*see* **FOR FURTHER INFORMATION CONTACT**).

Monday, January 24, 2011—Hilton New Bern/Riverfront, 100 Middle Street, New Bern, NC 28560; phone 252–638–3585.

Wednesday, January 26, 2011—Crowne Plaza Charleston Airport, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; phone 843–744–4422.

Thursday, January 27, 2011—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; phone 912–748–8888.

Monday, January 31, 2011—Jacksonville Marriott, 4670 Salisbury Road, Jacksonville, FL 32256; phone 904–296–2222.

Tuesday, February 1, 2011—International Palms Resort, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; phone 321–783–2271.

Thursday, February 3, 2011—Key Largo Grande Resort, 97000 Overseas Resort, Key Largo, FL 33037; phone 305–852–5553.

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

Dated: December 28, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–33102 Filed 12–30–10; 8:45 am]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA53

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 22 to the Fishery Management Plan for Snapper-Grouper Resources of the South Atlantic

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

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement

(EIS); notice of scoping meetings; request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare an EIS to describe and analyze a range of alternatives for management actions to be included in an amendment to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). These alternatives will consider measures to establish a long-term red snapper fishery management program in the South Atlantic to optimize yield and rebuild the stock, while minimizing socioeconomic impacts. More specifically, these alternatives will consider the elimination of harvest restrictions on red snapper as the stock increases in biomass. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the EIS.

DATES: Written comments on the scope of issues to be addressed in the EIS will be accepted from January 12 to February 14, 5 p.m., eastern time.

ADDRESSES: You may submit comments, identified by RIN 0648–BA53, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.*
- *Mail:* Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0264" in the keyword search, then select "Send a Comment or Submission". 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.

FOR FURTHER INFORMATION CONTACT: Kim Iverson; phone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The red snapper stock in the South Atlantic was assessed through the Southeast, Data, Assessment, and Review (SEDAR) process in 2008 and 2010. The assessments indicate that the stock is experiencing overfishing and is overfished. Overfishing is a condition when fishing pressure is beyond the allowable level. Overfishing may lead to an overfished condition. A stock is overfished when the biomass is below an identified minimum stock size threshold. Due to low biomass levels, an overfished stock has increased vulnerability to environmental variables and cannot produce the Maximum Sustainable Yield.

As a result of the 2008 assessment, fishing for red snapper was prohibited temporarily through an interim rule from January 4, 2010, to December 5, 2010, to enable the Council to develop measures to end overfishing in Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic region (Amendment 17A). Prior regulations included a recreational bag limit of 2 fish per person per day and a 20 inch total length minimum size limit for both commercial and recreational fishermen. Amendment 17A was submitted to the Secretary of Commerce on July 20, 2010, and approved on October 27, 2010. Measures in Amendment 17A included the continuation of the red snapper closure harvest prohibition established through the interim rule.

NMFS, in collaboration with the Council, is considering alternatives to eliminate harvest restrictions on red snapper as the stock increases in biomass. Examples of measures under consideration include the implementation of red snapper trip limits, bag limits, a catch share program, tag program, temporal and spatial closures including those to protect spawning stocks, and gear prohibitions. These preliminary measures may not represent the full range of alternatives that eventually will be evaluated in the EIS.

NMFS, in collaboration with the Council, will develop an EIS to describe and analyze alternatives to address the management needs described above. Those alternatives will include a "no action" alternative for each action.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the EIS.

Copies of an information packet will be available from NMFS (*see* **ADDRESSES**).

Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the draft EIS (DEIS) and the associated Amendment 22. After the DEIS associated with Amendment 22 is completed, it will be filed with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All meetings will begin at 3 p.m. In addition to Amendment 22, the Council intends to scope additional amendments at this series of meetings. Separate NOIs will be prepared for each amendment. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (*see* **FOR FURTHER INFORMATION CONTACT**).

Monday, January 24, 2011—Hilton New Bern/Riverfront, 100 Middle Street, New Bern, NC 28560; phone 252–638–3585.

Wednesday, January 26, 2011—Crowne Plaza Charleston Airport, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; phone 843–744–4422.

Thursday, January 27, 2011—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; phone 912–748–8888.

Monday, January 31, 2011—Jacksonville Marriott, 4670 Salisbury

Road, Jacksonville, FL 32256; phone 904–296–2222.

Tuesday, February 1, 2011—International Palms Resort, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; phone 321–783–2271.

Thursday, February 3, 2011—Key Largo Grande Resort, 97000 Overseas Resort, Key Largo, FL 33037; phone 305–852–5553.

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

Dated: December 28, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–33100 Filed 12–30–10; 8:45 am]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA118

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR Review Workshop for Gulf of Mexico yellowedge grouper and tilefish.

SUMMARY: The SEDAR assessments of the Gulf of Mexico stocks of yellowedge grouper and tilefish will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop.

DATES: The Review Workshop will take place February 14–17, 2011. The workshop will begin at 1 p.m. on February 14th and conclude at 12 p.m. on February 17th. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice. *See* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Review Workshop will be held at Embassy Suites Tampa-Downtown Convention Center, 513 S. Florida Avenue, Tampa, FL 33602.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies.

SEDAR 22 Review Workshop Schedule

February 14–17, 2011; SEDAR 22 Review Workshop

February 14, 2010: 1 p.m.–8 p.m.; February 15–16, 2010: 8 a.m.–8 p.m.; February 17, 2010: 8 a.m.–12 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Review Workshop Summary report.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during 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 the Council office (*see* **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: December 27, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–32949 Filed 12–30–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–76]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–76 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

DEC 21 2010

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-76, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Switzerland for defense articles and services estimated to cost $358 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-76

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Switzerland

(ii) Total Estimated Value:

Major Defense Equipment*	$ 341 million
Other	$ 17 million
TOTAL	$ 358 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 150 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 6 AIM-120C-7 Telemetry Missiles, 24 AIM-120C-7 Captive Air Training Missiles, 1 spare Missile Guidance Section, missile containers, weapon system support equipment, spare and repair parts, publications and technical documents, repair and return, depot maintenance, training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics and program support.

(iv) Military Department: Air Force (YBC)

(v) Prior Related Cases, if any: FMS case YBB-14M-19Aug94

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: DEC 2 1 2010

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Switzerland – AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

The Government of Switzerland has requested the purchase of 150 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 6 AIM-120C-7 Telemetry Missiles, 24 AIM-120C-7 Captive Air Training Missiles, 1 spare Missile Guidance Section, missile containers, weapon system support equipment, spare and repair parts, publications and technical documents, repair and return, depot maintenance, training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics and program support. The estimated cost is $358 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country, which has been, and continues to be an important force for political stability and economic progress in Europe.

Switzerland intends to use the AMRAAM missiles on its existing fleet of F/A-18 aircraft. The sale of AMRAAM tactical missiles gives Switzerland credible territorial defense capability by increasing its sustainment capability during defensive operations, and extending the overall lifespan of its missile inventory. Switzerland, which already has AMRAAM missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the Raytheon Missile Systems Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Switzerland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-76

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AMRAAM is classified Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–C

[FR Doc. 2010–33034 Filed 12–30–10; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–66]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–66 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 2 1 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-66, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-66

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: India

(ii) Total Estimated Value:

Major Defense Equipment*	$ 76 million
Other	$124 million
TOTAL	$200 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 21 AGM-84L HARPOON Block II Missiles, 5 ATM-84L HARPOON Block II Training Missiles, Captive Air Training Missiles, containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor representatives' technical assistance, engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (AAP)

(v) Prior Related Cases, if any: FMS case AAL-$74M-13Aug10

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: DEC 21 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India – AGM-84L HARPOON Block II Missiles

The Government of India has requested a possible sale of 21 AGM-84L HARPOON Block II Missiles, 5 ATM-84L HARPOON Block II Training Missiles, Captive Air Training Missiles, containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor representatives' technical assistance, engineering and logistics support services, and other related elements of logistics support. The estimated cost is $200 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the security of an important partner which continues to be an important force for political stability, peace, and economic progress in South Asia.

India intends to use the missiles on its Indian Navy P-8I Neptune maritime patrol aircraft which will provide enhanced capabilities in effective defense of critical sea lines of communication. India has already purchased HARPOON Block II missiles for integration on the Indian Air Force Jaguar aircraft and will have no difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be The Boeing Company in St. Louis, Missouri, and Delex Systems Incorporated in Vienna, Virginia. Details of a potential offset agreement in connection with the proposed sale are not known as of the date of this transmittal.

Implementation of this proposed sale will require annual trips to India involving U.S. Government and contractor representatives for technical reviews, support, and oversight on for approximately five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-66

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AGM-84L HARPOON Block II missile system is classified Confidential. The HARPOON missile is a non-nuclear tactical weapon system currently in service in the U.S. Navy and in 28 other foreign nations. It provides a day, night, and adverse weather, standoff air-to-surface capability and is an effective Anti-Surface Warfare missile. The AGM-84L incorporates components, software, and technical design information that are considered sensitive. The following components being conveyed by the proposed sale that are considered sensitive and are classified Confidential include:

a. The Radar Seeker
b. The Guidance Control Unit GPS/INS System
c. Operational Flight Program Software
d. Missile operational characteristics and performance data

These elements are essential to the ability of the HARPOON missile to selectively engage hostile targets under a wide range of operations, tactical and environmental conditions.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–C

[FR Doc. 2010–33036 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Federal Advisory Committee Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* Defense Acquisition University Board of Visitors (BoV).

2. *Date:* Wednesday, January 26, 2011.

3. *Time:* 9 a.m.–2 p.m.

4. *Location:* Admiral Kidd Conference Center, Naval Mine and Anti-Submarine Warfare Command, Pt. Loma, San Diego, CA 92147.

5. *Purpose of the Meeting:* The purpose of this meeting is to report back to the BoV on continuing items of interest.

6. *Agenda:*

9 a.m. Welcome and approval of minutes.
9:15 a.m. DAU Support to Space Acquisition Community.
10:15 a.m. Acquisition Research.
10:45 a.m. Future Direction of DAU.
12:45 p.m. DoD Ethics Training.
13:30 p.m. Open Forum.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Kelley Berta, 703–805–5412.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU, Phone: 703–805–5134, Fax: 703–805–5940, E-mail: *christen.goulding@dau.mil.*

Dated: December 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–33096 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0183]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on February 2, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 17, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 21, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing (November 18, 2003, 68 FR 65045).

CHANGES:

Delete entry and replace with "DMDC 15 DoD"

SYSTEM LOCATION:

Delete entry and replace with "U.S. Military Entrance Processing Command (MEPCOM), 2834 Green Bay Road, North Chicago, IL 60064–3094.

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's name, Social Security Number (SSN), address, telephone number, date of birth, sex, ethnic group identification, educational grade, rank, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to ASVAB subtests, test dates and test scores."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C 136, Under Secretary of Defense for Personnel & Readiness; DoD Instruction 1304.12E, DoD Military Personnel Accession Testing Programs; Army Regulation 601–222, OPNAVINST 1100.5, Marine Corps Pamphlet 1130.52E, Air Force Joint Instruction 36–2016, and Coast Guard Command Instruction M 1130.24A, Armed Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports. The data is used on a continuing basis for the purpose of regeneration of scores and reclassification, and score quality evaluation. Records are also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "MEPCOM—

Test scores transmittals and qualification test answer records are maintained for one year then destroyed.

DMDC—

Disposition pending (until the National Archives and Records Administration has approved the disposition, treat records as permanent)."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Director, Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Arlington, VA 22209–2593; or Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Individual should provide his/her full name, Social Security Number (SSN), date tested, and signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about them contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individual should provide the name and number of this system of record notice, his/her full name, Social Security Number (SSN), date tested, and signature."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "The individual and ASVAB tests."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager."

* * * * *

DMDC 15 DoD

SYSTEM NAME:

Armed Services Military Accession Testing.

SYSTEM LOCATION:

U.S. Military Entrance Processing Command (MEPCOM), 2834 Green Bay Road, North Chicago, IL 60064–3094.

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB), to include those who subsequently enlisted and those who did not. This applies to high school, college, National Civilian Community Corps, and vocational students who have participated in the DoD Student Testing Program (STP), as well as civilian applicants to the military services and active duty Service members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), address, telephone number, date of birth, sex, ethnic group identification, educational grade, rank, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to ASVAB subtests, test dates and test scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel & Readiness; DoD Instruction 1304.12E, DoD Military Personnel Accession Testing Programs; Army Regulation 601–222, OPNAVINST 1100.5, Marine Corps Pamphlet 1130.52E, Air Force Joint Instruction 36–2016, and Coast Guard Command Instruction M 1130.24A, Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports. The data is used on a continuing basis for the purpose of regeneration of scores and reclassification, and score quality evaluation. Records are also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

Access to records is restricted to authorized personnel having an official need-to-know. Automated data systems are protected by user identification and manual controls.

RETENTION AND DISPOSAL:

MEPCOM—

Test scores transmittals and qualification test answer records are maintained for one year then destroyed.

DMDC—

Disposition pending (until the National Archives and Records Administration has approved the disposition, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Arlington VA 22209–2593; or Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Individual should provide his/her full name, Social Security Number (SSN), date tested, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individual should provide the name and number of this system of record notice; his/her full name, Social Security Number (SSN), date tested, and signature.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual and ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Testing or examination material used solely to determine individual

qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2010–33031 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0184]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Contract Audit Agency is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on February 2, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis at (703) 767–1022, or Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 23, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 240.5

SYSTEM NAME:

Standards of Conduct, Conflict of Interest (May 18, 1999, 64 FR 26947).

CHANGES:

* * * * *

RETRIEVABILITY:

Delete and replace with "By individual's name, subject and corporation."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Permanent. Retain in active files for five years and then retire to Washington National Records Center."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the above address. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card, and give some verbal information that can be verified with 'case' folder."

* * * * *

RDCAA 240.5

SYSTEM NAME:

Standards of Conduct, Conflict of Interest.

SYSTEM LOCATION:

Office of the General Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who has accepted gratuities from contractors or who has business, professional or financial interests that would indicate a conflict between their private interests and those related to their duties and responsibilities as DCAA personnel. Any DCAA employee who is a member or officer of an organization that is incompatible with their official government position, using public office for private gain, or affecting adversely the confidence of the public in the integrity of the Government. Any DCAA employee who has requested an ethics opinion regarding the propriety of future actions on their part.

CATEGORIES OF RECORDS IN THE SYSTEM:

Office of the General Counsel-Files contain documents and background material on any apparent or potential conflict of interest or acceptance of gratuities by DCAA personnel. Correspondence may involve interoffice memorandums, correspondence between former DCAA employees and Headquarters staff members, citations used in legal determinations and Agency determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 5500.7–R, Joint Ethics Regulation (JER); and E.O. 12731, Principles of Ethical Conduct for Government Officers and Employees.

PURPOSE(S):

To provide a historical reference file of cases that are of precedential value to ensure equality of treatment of individuals in like circumstances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of DCAA's

compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name, subject and corporation.

SAFEGUARDS:

Under staff supervision during duty hours; buildings have security guards during non-duty hours.

RETENTION AND DISPOSAL:

Permanent. Retain in active files for five years and then retire to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the above address. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card, and give some verbal information that can be verified with 'case' folder.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the above address. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card, and give some verbal information that can be verified with 'case' folder.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individual's supervisor, DCAA employees, former employees, between DCAA staff members, and between DCAA and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–33032 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0185]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Contract Audit Agency is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on February 2, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis at (703) 767–1022, or Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 23, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 240.3

SYSTEM NAME:

Legal Opinions (May 18, 1999, 64 FR 26947).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name of the individual, current address and telephone number.

Fraud files contain interoffice memorandums, citations used in determining legal opinion, in some cases copies of investigations, copies of Agency determinations.

Equal Employment Opportunity (EEO) files contain initial appeal, copies of interoffice memorandums, testimony at EEO hearings, copy of Agency determinations and citations used in determining legal opinions.

Grievance files contain correspondence relating to DCAA employees filing grievances regarding leave, removals, resignations, suspensions, disciplinary actions, travel, citations used in determining legal opinion, and Agency determinations.

Merit System Protection Board (MSPB) Appeal files contain interoffice memorandums, citations used in determining the legal position, statements of witnesses, pleadings, briefs, MSPB decisions, notices of judicial appeals, litigation reports and correspondence with the Department of Justice.

Security Violation files contain interoffice correspondence relating to DCAA employee security violations, citations used in determinations, and Agency determinations."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Permanent. Retain in active files for five years and retire to Washington National Records Center."

* * * * *

RETRIEVABILITY:

Delete and replace with "By individual's name, subject and corporation."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number.

Personal visits are limited to those offices (Headquarters and Regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card and give some verbal information that could be verified with 'case' folder."

* * * * *

RDCAA 240.3

SYSTEM NAME:

Legal Opinions.

SYSTEM LOCATION:

Office of General Counsel, Headquarters, Defense Contact Audits Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who files a complaint, with regard to personnel issues, that requires a legal opinion or legal representation for resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name of the individual, current address and telephone number.

Fraud files contain interoffice memorandums, citations used in determining legal opinion, in some cases copies of investigations, copies of Agency determinations.

Equal Employment Opportunity (EEO) files contain initial appeal, copies of interoffice memorandums, testimony at EEO hearings, copy of Agency determinations and citations used in determining legal opinions.

Grievance files contain correspondence relating to DCAA employees filing grievances regarding leave, removals, resignations, suspensions, disciplinary actions, travel, citations used in determining legal opinion, and Agency determinations.

Merit System Protection Board (MSPB) Appeal files contain interoffice memorandums, citations used in determining the legal position, statements of witnesses, pleadings, briefs, MSPB decisions, notices of judicial appeals, litigation reports and correspondence with the Department of Justice.

Security Violation files contain interoffice correspondence relating to DCAA employee security violations, citations used in determinations, and Agency determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapters 43, 51, and 75; 5 U.S.C. 301, Departmental Regulations; and the Civil Service Reform Act of 1978.

PURPOSE(S):

To maintain a historical reference for matters of legal precedence within DCAA to ensure consistency of action and the legal sufficiency of personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name, subject and corporation.

SAFEGUARDS:

Under staff supervision during duty hours; security guards are provided during non-duty hours.

RETENTION AND DISPOSAL:

Permanent. Retain in active files for five years and retire to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number.

Personal visits are limited to those offices (Headquarters and Regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card and give some verbal information that could be verified with 'case' folder.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number.

Personal visits are limited to those offices (Headquarters and Regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card and give some verbal information that could be verified with 'case' folder.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10;

32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individual's supervisor, DCAA employees, former employers, between DCAA staff members, and between DCAA and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–33033 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 273. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 273 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* January 1, 2011.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 272. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 273 are updated rates for Alaska.

Dated: December 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	100		71		171	1/1/2009
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/15 - 09/15	181		68		249	1/1/2011
09/16 - 05/14	99		60		159	1/1/2011
BARROW						
01/01 - 12/31	159		95		254	10/1/2002
BETHEL						
01/01 - 12/31	139		108		247	1/1/2011
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
09/16 - 05/14	95		95		190	1/1/2011
05/15 - 09/15	139		99		238	1/1/2011
CORDOVA						
01/01 - 12/31	95		130		225	1/1/2011
CRAIG						
10/01 - 03/31	151		76		227	3/1/2010
04/01 - 09/30	236		84		320	3/1/2010
DELTA JUNCTION						
05/01 - 09/30	145		65		210	1/1/2011
10/01 - 04/30	115		64		179	1/1/2011
DENALI NATIONAL PARK						
06/01 - 08/31	135		88		223	1/1/2011

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/01 - 05/31	90		84		174	1/1/2011
DILLINGHAM						
05/15 - 10/15	185		111		296	1/1/2011
10/16 - 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		157		278	1/1/2011
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
05/05 - 09/15	175		107		282	1/1/2011
09/16 - 05/04	75		98		173	1/1/2011
ELFIN COVE						
01/01 - 12/31	200		45		245	8/1/2010
ELMENDORF AFB						
05/15 - 09/15	181		68		249	1/1/2011
09/16 - 05/14	99		60		159	1/1/2011
FAIRBANKS						
05/05 - 09/15	175		107		282	1/1/2011
09/16 - 05/04	75		98		173	1/1/2011
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
05/01 - 09/30	145		65		210	1/1/2011
10/01 - 04/30	115		64		179	1/1/2011
FT. RICHARDSON						
05/15 - 09/15	181		68		249	1/1/2011
09/16 - 05/14	99		60		159	1/1/2011
FT. WAINWRIGHT						
05/05 - 09/15	175		107		282	1/1/2011
09/16 - 05/04	75		98		173	1/1/2011
GAMBELL						
01/01 - 12/31	105		39		144	1/1/2011
GLENNALLEN						
05/15 - 09/15	139		99		238	1/1/2011

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/16	- 05/14	95		95		190	1/1/2011
HAINES							
01/01	- 12/31	107		101		208	1/1/2011
HEALY							
06/01	- 08/31	135		88		223	1/1/2011
09/01	- 05/31	90		84		174	1/1/2011
HOMER							
05/15	- 09/15	167		117		284	1/1/2011
09/16	- 05/14	79		115		194	1/1/2011
JUNEAU							
05/01	- 09/30	149		127		276	1/1/2011
10/01	- 04/30	109		123		232	1/1/2011
KAKTOVIK							
01/01	- 12/31	165		86		251	10/1/2002
KAVIK CAMP							
01/01	- 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA							
05/01	- 08/31	159		90		249	3/1/2010
09/01	- 04/30	79		82		161	3/1/2010
KENNICOTT							
01/01	- 12/31	259		94		353	1/1/2009
KETCHIKAN							
05/01	- 09/30	140		67		207	3/1/2010
10/01	- 04/30	99		63		162	3/1/2010
KING SALMON							
05/01	- 10/01	225		91		316	10/1/2002
10/02	- 04/30	125		81		206	10/1/2002
KLAWOCK							
04/01	- 09/30	236		84		320	3/1/2010
10/01	- 03/31	151		76		227	3/1/2010
KODIAK							
05/01	- 09/30	141		80		221	3/1/2010
10/01	- 04/30	99		76		175	3/1/2010
KOTZEBUE							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	189		93		282	3/1/2010
KULIS AGS						
05/15 - 09/15	181		68		249	1/1/2011
09/16 - 05/14	99		60		159	1/1/2011
MCCARTHY						
01/01 - 12/31	259		94		353	1/1/2009
MCGRATH						
01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME						
05/05 - 09/15	175		107		282	1/1/2011
09/16 - 05/04	75		98		173	1/1/2011
NOME						
01/01 - 12/31	150		97		247	3/1/2010
NUIQSUT						
01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG						
01/01 - 12/31	100		71		171	7/1/2008
POINT HOPE						
01/01 - 12/31	200		49		249	1/1/2011
POINT LAY						
01/01 - 12/31	225		23		248	1/1/2011
PORT ALEXANDER						
01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/1/2002
PRUDHOE BAY						
01/01 - 12/31	170		68		238	1/1/2011
SELDOVIA						
09/16 - 05/14	79		115		194	1/1/2011
05/15 - 09/15	167		117		284	1/1/2011
SEWARD						
10/01 - 04/30	99		81		180	3/1/2010
05/01 - 09/30	174		89		263	3/1/2010
SITKA-MT. EDGECUMBE						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	05/01 - 09/30	119		75		194	3/1/2010
	10/01 - 04/30	99		73		172	3/1/2010
SKAGWAY							
	05/01 - 09/30	140		67		207	3/1/2010
	10/01 - 04/30	99		63		162	3/1/2010
SLANA							
	10/01 - 04/30	99		55		154	2/1/2005
	05/01 - 09/30	139		55		194	2/1/2005
SPRUCE CAPE							
	05/01 - 09/30	141		80		221	3/1/2010
	10/01 - 04/30	99		76		175	3/1/2010
ST. GEORGE							
	01/01 - 12/31	129		55		184	6/1/2004
TALKEETNA							
	01/01 - 12/31	100		89		189	10/1/2002
TANANA							
	01/01 - 12/31	150		97		247	3/1/2010
TOK							
	05/01 - 09/30	129		76		205	3/1/2010
	10/01 - 04/30	99		73		172	3/1/2010
UMIAT							
	01/01 - 12/31	350		35		385	10/1/2006
VALDEZ							
	10/01 - 04/30	119		85		204	3/1/2010
	05/01 - 09/30	179		91		270	3/1/2010
WAINWRIGHT							
	01/01 - 12/31	175		83		258	1/1/2011
WASILLA							
	10/01 - 04/30	96		83		179	1/1/2009
	05/01 - 09/30	151		89		240	1/1/2009
WRANGELL							
	05/01 - 09/30	140		67		207	3/1/2010
	10/01 - 04/30	99		63		162	3/1/2010
YAKUTAT							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	105		94		199	1/1/2011
AMERICAN SAMOA						
AMERICAN SAMOA						
01/01 - 12/31	139		122		261	12/1/2010
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		94		253	7/1/2010
HAWAII						
[OTHER]						
01/01 - 12/31	121		104		225	5/1/2010
CAMP H M SMITH						
01/01 - 12/31	177		106		283	5/1/2008
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		106		283	5/1/2008
FT. DERUSSEY						
01/01 - 12/31	177		106		283	5/1/2008
FT. SHAFTER						
01/01 - 12/31	177		106		283	5/1/2008
HICKAM AFB						
01/01 - 12/31	177		106		283	5/1/2008
HONOLULU						
01/01 - 12/31	177		106		283	5/1/2008
ISLE OF HAWAII: HILO						
01/01 - 12/31	121		104		225	5/1/2010
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		108		288	5/1/2009
ISLE OF KAUAI						
01/01 - 12/31	198		115		313	5/1/2009
ISLE OF MAUI						
01/01 - 12/31	169		104		273	5/1/2009
ISLE OF OAHU						
01/01 - 12/31	177		106		283	5/1/2008
KEKAHA PACIFIC MISSILE RANGE FAC						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	198		115		313	5/1/2009
KILAUEA MILITARY CAMP						
01/01 - 12/31	121		104		225	5/1/2010
LANAI						
01/01 - 12/31	229		124		353	5/1/2009
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		106		283	5/1/2008
MCB HAWAII						
01/01 - 12/31	177		106		283	5/1/2008
MOLOKAI						
01/01 - 12/31	135		91		226	5/1/2010
NAS BARBERS POINT						
01/01 - 12/31	177		106		283	5/1/2008
PEARL HARBOR						
01/01 - 12/31	177		106		283	5/1/2008
SCHOFIELD BARRACKS						
01/01 - 12/31	177		106		283	5/1/2008
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		106		283	5/1/2008
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		49		174	5/1/2010
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	55		72		127	10/1/2002
ROTA						
01/01 - 12/31	129		102		231	7/1/2010
SAIPAN						
01/01 - 12/31	121		98		219	6/1/2007
TINIAN						
01/01 - 12/31	85		71		156	7/1/2010
PUERTO RICO						
[OTHER]						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	62		57		119	10/1/2002
AGUADILLA						
01/01 - 12/31	124		113		237	9/1/2010
BAYAMON						
01/01 - 12/31	195		128		323	9/1/2010
CAROLINA						
01/01 - 12/31	195		128		323	9/1/2010
CEIBA						
01/01 - 12/31	210		141		351	11/1/2010
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
01/01 - 12/31	195		128		323	9/1/2010
HUMACAO						
01/01 - 12/31	210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		128		323	9/1/2010
LUQUILLO						
01/01 - 12/31	210		141		351	11/1/2010
MAYAGUEZ						
01/01 - 12/31	109		112		221	9/1/2010
PONCE						
01/01 - 12/31	149		87		236	9/1/2010
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		128		323	9/1/2010
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	5/1/2006
12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN						
04/15 - 12/14	163		98		261	5/1/2006
12/15 - 04/14	220		104		324	5/1/2006

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. THOMAS						
04/15 - 12/14	240		105		345	5/1/2006
12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	152		16		168	5/1/2009

Page 9 of 9

BILLING CODE 5001–06–C

[FR Doc. 2010–33040 Filed 12–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Requirement for Commercial Users To Use Commercial Public Key Information (PKI) Certificate

AGENCY: Department of the Army, DoD. Surface Deployment and Distribution Command (SDDC).

ACTION: Notice.

SUMMARY: To implement DoD Instruction 8520.2, dated 1 April 2004, SDDC will require all commercial accounts accessing transportation systems and applications to use a commercial PKI certificate or Transportation Workers Identification Credential (TWIC). This requirement will enhance the security for

authentication, digital signatures and encryption.

DATES: *Effective date:* October 1, 2011.

ADDRESSES: Submit comments to SDDC/G6/IMA/TSS, 709 Ward Dr., Bldg 1990, Scott AFB, IL 62225 ATTN: ETA Program Manager.

FOR FURTHER INFORMATION CONTACT: ETA Program Manager at *sddc.safb.pki@us.army.mil.* Technical questions should be addressed to the source of certificate.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) and the U.S. Army are enhancing customer identification security as part of an overall program to provide a stronger and more secure authentication process for accessing DOD information systems. As of 1 October 2011, Surface Deployment and Distribution Command (SDDC) will meet this DOD mandate by requiring the use of a digital certificate for industry partners requiring access to SDDC information systems. Userid and password access will be discontinued on 30 September 2011.

The External Certification Authority (ECA) program supports the issuance of DOD-approved certificates to industry partners and other external entities and organizations that conduct business with the DOD. The ECA program is designed to provide a mechanism for these entities to securely communicate with the DOD and authenticate to DOD Information Systems. Additional information can be found at: *http://iase.disa.mil/pki/eca/.*

The ECA Certificates can be purchased through three sources: VeriSign, Operational Research Consultants (ORC), or Identrust. The following URLs provide additional information and links to purchase sources:

http://www.identrust.com/index.html
https://www.verisign.com/authentication/government-authentication/DOD-interoperability/index.html
http://www.eca.orc.com/index.html

This ECA Certificate purchase information is provided as a convenience to our industry partners and does not constitute endorsement of particular commercial entities by the Surface Deployment and Distribution Command, the United States Department of the Army, or the Department of Defense. We do not exercise any control over the information you may find at these sites or the security of these sites; responsibility for such remains with the individual companies represented.

An alternative identification security option is the Transportation Worker Identification Credential (TWIC). TWIC requirements and how to get a TWIC can be found at the TWIC Web site at: *http://www.tsa.gov/public* (click on "what we do", search "TWIC").

References: Department of Defense Instruction number 8520.2, 1 April 2004, 4.4 Joint Task Force-Global Network Operations (JTF–GNO) Communication Tasking Order (CTO) 07–015 Task 10.

Miscellaneous: DOD Instruction 8520.2 can be accessed at the following Web site: *DoD Instruction 8520.2* (*http://www.cac.mil/assets/pdfs/DoDD_8520.2.pdf*).

Randy Moore, CAPT, USN,

Division Chief, G6, Information Management/CIO.

[FR Doc. 2010–33066 Filed 12–30–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Occupational Radiation Protection Program, OMB Control Number 1910–5105. This information collection request covers information necessary to permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation.

DATES: Comments regarding this collection must be received on or before February 2, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503 and to Judith D. Foulke by facsimile at (301) 903–7773 or by e-mail at *judy.foulke@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: The DOE person listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No:* 1910–5105; (2) *Information Collection Request Title:* Occupational Radiation Protection Program; (3) *Purpose:* Needs and Uses: The information that 10 CFR 835 requires DOE major facilities management contractors to produce, maintain, and/or report is necessary to permit the Department to manage and oversee health and safety programs that control worker (*i.e.*, DOE employees, contractor and sub-contractor employees, and visiting workers) exposure to radiation; (4) *Estimated Number of Respondents:* 34; (5) *Estimated Total Burden Hours:* 41,500; and (6*) Number of Collections:* This information collection request contains six (6) information and/or recordkeeping requirements.

Statutory Authority: Title 10, Code of Federal Regulations, part 835, subpart H.

Issued in Washington, DC, on December 23, 2010.

Lesley A. Gasperow,

Director, Office of Resource Management (HS–1.2), Office of Health, Safety and Security.

[FR Doc. 2010–33070 Filed 12–30–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

The Central Valley Project, the California-Oregon Transmission Project, the Pacific Alternating Current Intertie, and Path 15 Transmission—Rate Order No. WAPA–156

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power, Transmission, and Ancillary Services Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing new and revised formula rates and information for the following: Western power, the Central Valley Project (CVP) transmission, the California-Oregon Transmission Project (COTP) transmission, the Pacific Alternating Current Intertie (PACI) transmission, ancillary services, custom product power, and information on Path 15 transmission upgrade. In addition to these existing rates for services, Western also is proposing to implement two new rates and services: Unreserved Use Penalties and Generator Imbalance Services (GI).

Western is not proposing any changes to its existing formula rate methodologies. The proposed rates will provide sufficient revenue to pay all annual costs including interest expense, investments, and aid to irrigation within the allowable time periods. Western's rate brochure providing detailed information on the proposed formula rates will be available January 11, 2011, to all interested parties upon request.

The current rates for existing services expire on September 30, 2011.[1] If approved, the proposed rates would become effective on October 1, 2011, and remain in effect through September 30, 2016, or until superseded by another rate schedule. Publication of this **Federal Register** notice begins the formal process for the proposed rate adjustments.

DATES: The consultation and comment period will begin on the date of publication of the **Federal Register** notice and will end April 4, 2011. Western will present a detailed explanation of the proposed rates at a public information forum. The public information forum date is: January 25, 2011, 1 p.m. Pacific Standard Time, Folsom, CA.

Western will accept written comments anytime during the consultation and comment period. In addition, Western will accept oral and written comments at a public comment forum. The public comment forum date is: March 1, 2011, 1 p.m. Pacific Standard Time, Folsom, CA.

ADDRESSES: Send written comments to Mr. Thomas R. Boyko, Regional Manager, or Mr. Charles J. Faust, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, or e-mail comments to *SNR–FY12RateCase@wapa.gov.*

Western will accept written comments anytime during the consultation and comment period. Western will post comments it receives on Western's Web site at *http://www.wapa.gov/sn/marketing/rates/ratesprocess/formalProcess/index.asp.* Western must receive written comments by the end of the consultation and comment period to ensure consideration.

Western will host both the public information and public comment forums at: Lake Natoma Inn, 702 Gold Lake Drive, Folsom, CA 95630–2559, telephone number (916) 351–1500.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Faust, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4468, or e-mail *SNR–FY12RateCase@wapa.gov.*

SUPPLEMENTARY INFORMATION: This **Federal Register** notice initiates the formal public process to replace the Federal Energy Regulatory Commission's (FERC) approved rate schedules effective beginning January 1, 2005, ending September 30, 2011.

The following discussion provides an overview of the proposed formula rates and components, including a rate comparison, rate recovery, and applicability. Western held 14 public Informal Rate meetings beginning June 2008 through April 2010. Based on stakeholders' comments and Western's analysis, Western is not proposing any changes to existing rate methodologies. Western proposes adding new rate schedules for unreserved use penalties and generator imbalance services. Western will continue to operate as a Sub-Balancing Authority (SBA) under contract with the Sacramento Municipal Utility District, who operates the Host Balancing Authority (HBA).

Prior to the start of each fiscal year (FY), Western will calculate and publish an annual Power Revenue Requirement (PRR) to determine the total cost of power to be allocated to preference customers. For example, by October 1, 2011, Western will publish the PRR for FY 2012, which begins October 1, 2011, and ends September 30, 2012. As part of the rate development, Western prepares a Power Repayment Study (PRS) each FY to determine if revenue will be sufficient to repay, within the required time periods, all costs assigned to the commercial power function. Repayment criteria are based on legislation and applicable policies, including DOE Order RA 6120.2. Generally, the PRR includes operation and maintenance (O&M) expenses, purchased power for Project Use and First Preference (FP) customers' loads, interest and other expenses (including any other statutorily-required costs or charges), investment repayment, and the Washoe Project annual PRR that remains after project use loads are met. Revenues from project use, transmission, ancillary services, and other services are offset against expenses in the PRR; and the remainder is collected from Base Resource (BR) and FP customers. The PRR is reviewed during March of each year; and if such review results in a change of $5 million or more, the PRR is adjusted for the remaining 6-month period. The PRR is an estimate of revenues and costs including investment and repayment projections from the PRS. Any deviation from estimate to actual will increase or decrease annual project repayment. Project repayment is measured over the long term to ensure repayment is met and to maintain rate stability.

The PRR is allocated to Western's preference customers, namely, FP customers based on their FP percentages, and the remaining amount to BR customers based on their BR allocation, adjusted for programs, such as, hourly exchange. The Trinity River Division Act of 1955 (69 Stat. 719) and the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192) accorded first preference to CVP power to customers in Trinity, Tuolumne, and Calaveras Counties. A BR customer, under the 2004 Marketing Plan, is an entity that has executed a BR contract and is allocated a percentage of the BR.

In order for Western to meet the load requirements, beyond delivered BR, for Full Load Service (FLS) customers and Variable Resource (VR) customers, Western may make supplemental power (SP) purchases, pursuant to the Custom Product Power (CPP) rate schedule. FLS and VR customers who contract with Western for such service will pay all SP costs. FLS customers pay a portfolio management charge pursuant to their contract, whereas VR customers pay a scheduling charge pursuant to the proposed rate schedule.

At least annually, Western will publish the CVP transmission rates for point-to-point and network integration transmission service, the seasonal COTP and PACI transmission rates, and CVP regulation and frequency response service rates. Western prepares a detailed cost-of-service study to determine the costs, by project, that support the transfer capability of each transmission system and the costs that support the generation capability of the CVP system. Generally, the costs allocated through the cost-of-service study for the transmission systems include O&M, interest, and depreciation expenses. Western's costs for scheduling, system control and dispatch service associated with CVP, COTP, and PACI transmission service are included and recovered through the respective transmission system's RR. Third-party transmission service costs are passed through directly to each requesting customer.

Spinning and supplemental reserves are charged the price consistent with the California Independent System Operator's (CAISO) market price plus all costs incurred for the sale of these reserves. Customers who have a

[1] *See* Rate Order No. WAPA–139, 73 FR 48381 (August 19, 2008).

contractual obligation to provide spinning and supplemental reserves and do not fulfill their obligation will be assessed a penalty equal to the greater of Western's actual cost or 150 percent of the market price. Similarly, for Energy Imbalance (EI) service, customers outside of their contractual bandwidth (under delivery) will pay the greater of 150 percent of the market price or Western's actual cost. Given Western's EI customers are and will continue to operate under existing agreements, Western will continue its existing rate methodology for EI. During the applicable rate period, Western will review FERC Order No. 890 *pro forma* approach, as well as Western's existing settlements and billing processes and will reconsider a transition to FERC's *pro forma* tariff methodology during Western's next rate process or earlier if deemed appropriate.

Finally, based on the requirements under FERC's Order No. 890, Western proposes adding two new rate schedules to be effective during the new rate period: Unreserved Use Penalties and GI. Western proposes the Unreserved Use Penalties be assessed at 150 percent of the effective point-to-point transmission rate when transmission service is used and not reserved or when used in excess of reservation. Western proposes the GI rate use the same tiered methodology as Western's existing and proposed EI service rate and any subsequent changes. Note, currently Western has no customers subject to this proposed GI rate.

Information on Path 15 Transmission Upgrade

The Path 15 Transmission Upgrade was completed in 2005. Western has turned over the operational control of Western's Path 15 Upgrade to the CAISO. Western maintains the lines and is compensated by Atlantic Path 15, LLC for the Operation and Maintenance work costs. The CAISO charges for use on the Path 15 Upgrade as part of its rates. Western does not charge a separate rate for Path 15. Western collects revenues from the CAISO under its agreements with the CAISO. Under Amendment No. 48, the CAISO remits to Western, wheeling, congestion, and Congestion Revenue Rights revenues associated with Western's rights on the Path 15 transmission.[2]

Proposed Rate Schedules and Discussion

Proposed Rate Schedule Cv–F13 (Supersedes CV–F12)

Schedule of Rates for Base Resource and First Preference Power

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region (SNR).

Applicable: To the BR and FP power customers.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract. This service includes the CVP transmission (to include reactive supply and voltage control from Federal generation sources needed to support the transmission service), spinning reserve service, and supplemental reserve service.

Power Revenue Requirement: Western will develop the PRR prior to the start of each FY. The PRR will be divided into two 6-month periods, October through March and April through September. A monthly PRR will be calculated by dividing each 6-month PRR by six. The PRR for the April-through-September period will be reviewed in March of each year. The review will analyze financial data from the October-through-February period, to the extent information is available, as well as forecasted data for the March-through-September period. If there is a change of $5 million or more, the PRR for the April-through-September period will be recalculated. The PRR is allocated to FP and BR customers based on the formula rates.

EXAMPLE OF POWER REVENUE REQUIREMENT ALLOCATION TO FIRST PREFERENCE AND BASE RESOURCE

Component	Formula	Allocation
Annual PRR		$70,000,000
FP Customer Allocation (Total FP % = 5%)	$70,000,000 × 5%	3,500,000
Remaining PRR Allocated to BR	$70,000,000 − $3,500,000	66,500,000

Note: This example is intended to show the PRR allocation to the customer groups and is not adjusted for billing or midyear adjustments.

First Preference Power Formula Rate: The annual FP customer allocation is equal to the annual PRR multiplied by the relevant FP percentage.

Component 1:

$$\text{FP Customer Percentage} = \frac{\text{FP Customer Load}}{\text{Gen + Power Purchases - Project Use}}$$

Where:

FP Customer Load = An FP customer's forecasted annual load in megawatthours (MWh).

Gen = The forecasted annual CVP and Washoe generation (MWh).

Power Purchases = Power purchases for project use and FP loads (MWh).

Project Use = The forecasted annual project use loads (MWh).

MRR = Monthly Power Revenue Requirement.

Western will develop the FP customer percentage prior to the start of each FY. During March of each FY, each FP customer's percentage will be reviewed. If, as a result of the review, there is a change in the FP customer's percentage of more than one-half of one percent, the percentage will be revised for the April-through-September period.

The percentages in the table below are the maximum percentages for each FP customer that will be effective to the MRR during the rate period October 1, 2011, through September 30, 2016. The maximum percentages were determined based on a critically dry year where there are hydrologic conditions that result in low CVP generation and, consequently, low levels of BR. An FP

[2] Amendment No. 48 amended CAISO's tariff to provide congestion revenues, wheeling revenues, and firm transmission rights auction revenues to entities other than CAISO's Participating Transmission Owners, if any such entities fund transmission facility upgrades on the CAISO grid. *See* Federal Energy Regulatory Commission Docket No. ER03–407–000.

percentage cannot exceed the maximum except in instances where individual FP customer percentages increase due to load growth. If these maximum percentages are used for determining the FP customer's charges for more than 1 year, Western will evaluate their percentage from the formula rate versus the maximum percentage and make adjustments as appropriate.

FIRST PREFERENCE'S ACTUAL MAXIMUM PERCENTAGES EFFECTIVE RATE PERIOD

FP customers	Maximum FP customer's percentage applied to the MRR (%)
Sierra Conservation Center	1.58
Calaveras Public Power Agency	3.81
Trinity Public Utilities District	11.99
Tuolumne Public Power Agency	3.16
Total	20.54

Below is a sample calculation for an FP customer monthly charge for power.

EXAMPLE—FIRST PREFERENCE MONTHLY CUSTOMER CHARGE CALCULATION

Numerator:	
FP Customer Load—MWh	10,000
Denominator:	
Washoe Generation—MWh	2,500
CVP Generation—MWh	3,700,000
Project Use Load—MWh	(1,200,000)
Project Use Purchase—MWh	47,000
Calculated Percentage:	
FP Customer Percentage	0.39%
Monthly Power Revenue Requirement (MRR)	$3,333,333
FP Customer Monthly Charge = (FP % × MRR)	$13,000

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

BR Formula Rate: The annual BR allocation is equal to the annual PRR less the annual FP customer allocation.

Component 1:

BR Customer Allocation = (BR RR × BR %)

Where:

BR RR = BR Monthly Revenue Requirement (RR)

BR % = BR percentage for each customer as indicated in the BR contract after adjustments for programs, such as hourly exchange, if applicable.

After the FP customers' share of the annual PRR has been determined, the remainder of the annual PRR is recovered from the BR customers. The BR RR will be collected in two 6-month periods. For October through March, 25 percent of the BR RR will be collected. For April through September, 75 percent of the BR RR will be collected.

A BR RR is calculated by dividing the BR 6-month RR by six. The revenues from the sale of surplus BR will be applied to the annual BR RR for the following FY.

An example of a reallocation program is the Hourly Exchange (HE) Program. BR customers pay for exchange energy, hourly or seasonally, by adjusting the BR percentage that is applied to the BR RR. Adjustments to a customer's BR percentage for seasonal exchanges will be reflected in the customer's BR contract.

An illustration of the adjustment to a customer's BR percentage for HE energy is shown in the example below.

EXAMPLE OF BASE RESOURCE PERCENTAGE ADJUSTMENTS FOR HOURLY EXCHANGE ENERGY

BR customer	BR % from contract	Hourly BR = 30 MWh	Customer's BR > load	Customers receiving HE	BR delivered (adj'd for HE)	Revised BR %
Customer A	20	6	3	0	3	10.0
Customer B	10	3	0	1	4	13.3
Customer C	70	21	0	2	23	76.7
Total	100	30	3	3	30	100.0

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed

through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for BR and FP power will occur monthly using the respective formula rate.

Adjustment for Losses: Losses will be accounted for under this rate schedule as stated in the service agreement.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the RR under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Comparison of the existing to the proposed RR results in a change in costs and not a rate methodology change. The 0.86 percent PRR increase is due to an inflationary change to O&M, as well as increased interest expense. Those costs are offset by increased transmission revenue due to the anticipated completion of assets supporting the transmission function. The table below compares the existing RRs (FY 2011) to the estimated RRs (FY 2012) under the proposed formula rates.

COMPARISON OF EXISTING TO PROPOSED POWER REVENUE REQUIREMENT, AND ALLOCATION TO FIRST PREFERENCE AND BASE RESOURCE CUSTOMERS

Service	Existing RRs	Estimated RRs for the proposed formula rate (effective FY 2012)	Percent change (%)
PRR	$75,751,929	$76,401,847	0.86
FP RR	3,636,093	3,644,368	0.02
BR RR	72,115,836	72,757,479	0.89

The table below compares the FP percentages as well as their maximum percentages for the two periods.

FIRST PREFERENCE PERCENTAGE COMPARISON, AND ACTUAL MAXIMUM PERCENTAGES EFFECTIVE RATE PERIOD

FP Customers	FP percentages		Maximum FP customer's percentage applied to the MRR	
	Existing (%)	Estimated (%)	Existing (%)	Estimated (%)
Sierra Conservation Center	0.37	0.37	1.39	1.58
Calaveras Public Power Agency	0.90	0.90	3.49	3.81
Trinity Public Utilities District	2.80	2.80	9.21	11.99
Tuolumne Public Power Agency	0.73	0.70	3.42	3.16
Total	4.80	4.76	17.51	20.54

The change in FP percentages is due to changes in generation and FP customer loads not a rate methodology change. The increase in FP maximum percentage is due to a collective increase in FP customer loads not a rate methodology change.

During the effective rate period, if deemed appropriate, Western will reevaluate the FP maximum percentage based on new data.

Rate Recovery and Application

The formula rates for CVP FP power and BR power are based on a PRR that recovers: (1) O&M expense allocated to power; (2) CVP network transmission; (3) annual investment and replacement repayment; (4) aid-to-irrigation costs; (5) interest expense; (6) power purchases for firming BR; (7) Washoe project annual costs after project use loads are met; (8) other miscellaneous expenses allocated to power, such as, settlements, California-Oregon Intertie (COI) path operator costs, *etc.;* (9) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; (10) the pass through of the HBA's charges or credits; (11) any other statutorily-required costs or charges; and (12) any other costs associated with BR or FP power service including uncollectible debt.

Expenses are offset by revenues from project use energy, transmission revenue, ancillary service revenue, scheduling coordinator, portfolio management and VR charge administrative fees, all pass through revenue, and any other miscellaneous revenue.

The PRR will be allocated first to FP customers based on their percentages, subject to the maximum cap, then the remaining amount to BR customers based on their BR allocation percentages, adjusted for programs, such as, HE if applicable.

The BR RR will be collected in two, 6-month periods: 25 percent for October through March and 75 percent for April through September. However, the FP RR is not subject to the 25/75 percent split; and it will be collected evenly over a 12-month period.

The formula rates will be effective at the beginning of each FY and reviewed in March of each year. If the March mid-year review reflects a change of $5 million or more, the annual PRR will be revised. The FP percentages are also reviewed at mid-year. If the mid-year

review reflects a change to a FP customer's percentage of more than one half of one percent, that customer's percentage will be revised for the remainder of the FY.

The formula rates apply to CVP BR and FP power customers. The estimated rates are subject to change prior to the rates taking effect. The rates will be finalized by Western on or before October 1, 2011.

Proposed Formula Rate for Custom Product Power and Effective Rate for Variable Resource Schedules

Rate Schedule CPP–2 (Supersedes CPP–1)

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers that contract with Western for CPP.

To VR customers requesting scheduling for this service. VR customers will pay a scheduling charge to recover Western's cost for scheduling VR CPP service.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Formula Rate: The formula rate for CPP includes three components:

Component 1: The customer will pay all costs incurred in the provision of CPP. These costs will be passed through to the customer. The methodology used to calculate the amount of the pass through will be based on the type of funding used to purchase the CPP. The CPP includes, but is not limited to, SP and BR firming power. If in the event customer advance funding is used to purchase CPP, then allocation of surplus CPP sales will be determined based on customer's account status.

If the CPP is funded through appropriations, Federal reimbursable, or use of receipts authority, the cost of the CPP is passed through to the customer(s) for whom Western has made the purchase. The CPP funded through appropriations, Federal reimbursable, or use of receipts authority that is surplus to the load requirements of the customer(s) will be sold. Proceeds from the sale of surplus CPP funded through use of receipts, Federal reimbursable, or appropriations authority will be applied to the CPP purchase cost for the customer(s) to the extent possible. If the cost of the CPP is fully recovered and proceeds remain from the sale of surplus CPP, the remaining proceeds will be used to reduce the PRR.

The table below illustrates the pass through of the CPP costs to each customer and the treatment of proceeds from the sale of surplus CPP funded through appropriations, Federal reimbursable, or use of receipts authority. As shown below, Customers A, B, and C are responsible for paying the full costs of the CPP purchase made by Western (total CPP RR is $780). The CPP RR of $780 is reduced by the sale of 1 MWh at $45, which reduces the CPP RR to $735. Therefore, the reduced CPP RR of $735 is prorated to each customer based on the amount of CPP purchased on their behalf.

EXAMPLE CUSTOM PRODUCT POWER COST RECOVERY WITH PROCEEDS FROM SALES OF SURPLUS CUSTOM PRODUCT POWER USE OF RECEIPTS, FEDERAL REIMBURSABLE, OR APPROPRIATIONS AUTHORITY

[If Western made a CPP purchase of 13 MW for the hour @ $60/MWh = $780]

	CPP purchased (MWh)	CPP USED (MWh)	CPP Costs	Surplus CPP sold	Proceeds from excess CPP sales	CPP customer charges
Customer A	5	5		0		$283
Customer B	4	4		0		226
Customer C	4	3		1		226
Total	13	12	$780	1	$45	735

Notes:
1. Western sold 1 MWh of CPP at $45/MWh = $45.
2. Proceeds from the sale of surplus CPP reduce the CPP Costs prorated based on the amount of CPP purchased.

Effective October 1, 2011, Western will charge $38.22 per schedule per day to cover its administrative costs for procuring and scheduling CPP if the customer has not contracted with Western for this type of service through other agreements. If the actual number of schedules for the month is not available, Western will estimate the number of schedules for the month and apply the $38.22 per schedule charge to the estimated number of schedules.

The table below depicts the VR customers charge per schedule for the effective rate period.

VARIABLE RESOURCE CUSTOMERS EFFECTIVE RATE PER SCHEDULE

FY	2012	2013	2014	2015	2016
VR Charge Per Schedule	$38.22	$39.36	$40.54	$41.76	$43.01

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant

customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for CPP and VR customers' scheduling charge occurs monthly using the formula rate.

Adjustments for Losses: All losses incurred for delivery of CPP under this rate schedule shall be the responsibility of the customer that has contracted for this service.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the RR under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Effective October 1, 2011, the CPP cost recovery is not changing from the existing methodology and remains 100 percent pass through under this rate schedule.

Under the proposed formula rate, Component 1, the VR customer's scheduling charge is adjusted to $38.22 per schedule. This is a 23-percent increase from the January 1, 2005, VR customer's charge of $31.07 per schedule. This increase is based on a percentage change in O&M from the 2005 rate case through FY 2010. The FY 2013 VR customer's charge increases 3 percent each year through FY 2016 to reflect inflationary increases. The rate increase is due to inflationary costs not a rate methodology change.

Rate Recovery and Application

The CPP cost recovery methodology is not changing and remains 100 percent pass through under this rate schedule. The formula rate for CPP applies to power supplied by Western to meet a customer's load. The VR customer charge is to recover Western's cost for scheduling VR customer's CPP service.

Proposed Formula Rate for CVP Transmission

Proposed Rate Schedule CV–T3 (Supersedes CV–T2)

Central Valley Project; Schedule of Rate for Firm and Non-Firm Point-to-Point Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving CVP firm and/or non-firm point-to-point transmission service.

Character and Conditions of Service

Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for CVP firm and non-firm point-to-point transmission includes three components:

Component 1:

$$\frac{\text{CVP TRR}}{\text{TTc} + \text{NITSc}}$$

Where:

CVP TRR = Transmission Revenue Requirement (TRR) is the cost associated with facilities that support the transfer capability of the CVP transmission system excluding generation facilities and radial lines.

TTc = The Total Transmission Capacity is the total transmission capacity under long-term contract between Western and other parties.

NITSc = The Network Integration Transmission Service Capacity is the 12-month average coincident peaks of Network Integrated Transmission Service (NITS) customers at the time of the monthly CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS.

Western may revise the rate from Component 1 based on either of the following conditions: (1) Updated financial data available in March of each year; or (2) a change in the numerator or denominator that results in a rate change of at least $0.05 per kilowatt month (kWmonth). Rate change notifications will be posted on Western's Open Access Same-Time Information System (OASIS).

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above applies to the maximum amount of capacity reserved for periods ranging from 1 hour to 1 month, payable whether used or not. Billing will occur monthly.

Adjustment for Losses: Losses incurred for service under this rate schedule will be accounted for as agreed to by the parties in accordance with the service agreements.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the RR under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Under the proposed formula rate, Component 1, the estimated firm and non-firm point-to-point rate effective October 1, 2011, is $1.32 per kWmonth. This is a 22-percent increase from the October 1, 2010, CVP firm and non-firm point-to-point rate of $1.08 per kWmonth. The rate increase is due to the anticipated completion of assets supporting the transmission function not a rate methodology change.

Rate Recovery and Application

The formula rate for CVP transmission service is based on a RR that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) costs include O&M costs, cost of capital or interest expense, depreciation expense, and other miscellaneous costs; (4) the cost for transmission scheduling, system control and dispatch service is included in O&M; (5) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; (6) the pass through of the HBA's charges or credits; (7) any other statutorily-required costs or charges; and (8) any other costs associated with transmission service including uncollectible debt. Revenues from the sales of short-term, non-firm transmission will offset the TRR.

Revenue from unreserved use of transmission penalties exceeding transmission service cost will be applied as an offset to the TRR.

The formula rate applies to CVP firm point-to-point transmission service, existing CVP firm pre-Open Access Transmission Tariff (OATT) transmission service, and CVP non-firm transmission service. The estimated rates resulting from the formula rate are subject to change prior to the rates taking effect. The rates will be finalized by Western on or before October 1, 2011.

Proposed Rate Schedule CV–NWT5 (Supersedes Schedule CV–NWT4)

Proposed Formula Rate for CVP NITS

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving CVP NITS.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for CVP NITS includes three components:

Component 1: The NITS RR is the result of the CVP TRR less the CVP firm point-to-point TRR. Each NITS customer's allocation is based on the following formula:

NITS customer's monthly demand charge = NITS customer's load ratio share times one-twelfth (1/12) of the Annual Network TRR.

Where:

NITS customer's load ratio share = The NITS customer's usage, hourly or in accordance with approved policies or procedures, (including behind the meter generation minus the NITS customer's adjusted BR) coincident with the monthly CVP transmission system peak, averaged over a 12-month rolling period.

Annual Network TRR = The total CVP TRR, less revenues from long-term contracts for the CVP transmission between Western and other parties.

The Annual Network TRR will be revised when the rate from Component 1 of the CVP transmission rate under Rates Schedule CV–T3 is revised.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Rate Comparison

Effective October 1, 2011, the estimated monthly NITS RR is $2,237,158. This rate is a 23-percent increase from the October 1, 2010, monthly NITS RR of $1,824,170. The rate increase is due to the anticipated completion of assets supporting the CVP transmission function not a rate methodology change.

The formula rate applies to CVP NITS. The estimated NITS monthly RR, resulting from the formula rate, may change prior to the rates taking effect based on the final CVP TRR. The NITS monthly RR will be finalized by Western on or before October 1, 2011.

Rate Recovery and Application

The formula rate for CVP NITS is based on a RR that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) costs include O&M cost, cost of capital or interest expense, depreciation expense, and other miscellaneous costs; (4) the cost for transmission scheduling, system control and dispatch; (5) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; (6) the pass through of the HBA's charges or credits; (7) any other statutorily-required costs or charges; and (8) any other costs associated with transmission service including uncollectible debt. Revenues from the sales of short-term, non-firm transmission will offset the TRR. Revenue exceeding cost from unreserved use of transmission penalties will also be applied as an offset to the TRR.

The formula rate applies to CVP NITS transmission service. The estimated rates resulting from the formula rate are subject to change prior to the rates taking effect. The rates will be finalized by Western on or before October 1, 2011.

Proposed Rate Schedule COTP–T3 (Supersedes Schedule COTP–T2)

Formula Rate for COTP Point-to-Point Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving COTP firm and/or non-firm point-to-point transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The formula rate for COTP firm and non-firm point-to-point transmission service includes three components:

Component 1:

$$\frac{\text{COTP TRR}}{\text{Western's COTP Seasonal Capacity}}$$

Where:

COTP TRR = COTP Seasonal TRR (Western's costs associated with facilities that support the transfer capability of the COTP).

Western's COTP Seasonal Capacity =

Western's share of COTP capacity (subject to curtailment) under the current COI transfer capability for the season. The three seasons are defined as follows: Summer—June through October; Winter—November through March; and Spring—April through May.

Western will update the formula rate from Component 1 for COTP firm and non-firm point-to-point transmission service at least 15 days before the start of each COI rating season. Rate change notifications will be posted on the OASIS Web site.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Rate Comparison

A comparison of the estimated rates resulting from Component 1 of the proposed formula rate for COTP firm point-to-point transmission service to the existing COTP firm point-to-point transmission service rates are shown in the table below.

TABLE—COMPARISON OF EXISTING RATES TO ESTIMATED RATES FROM THE PROPOSED FORMULA RATE FOR COTP FIRM AND NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE

Season	Existing rates	Estimated rates from proposed formula rate	Percent increase
Spring	$2.74 $/MWh	$2.80 $/MWh	1.02
Summer	$2.73 $/MWh	$2.79 $/MWh	1.02
Winter	$2.77 $/MWh	$2.83 $/MWh	1.02

The estimated firm point-to-point COTP transmission service rate increased primarily due to an inflationary increase of costs not a rate methodology change.

Rate Recovery and Application

The proposed formula rate for COTP firm and non-firm point-to-point transmission service is based on a RR that recovers: (1) The COTP transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) the cost of scheduling system control and dispatch service associated with COTP transmission; (4) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; (5) the pass through of the HBA's charges or credits; (6) any other statutorily-required costs or charges; and (7) any other costs associated with transmission service including uncollectible debt.

The proposed firm and non-firm formula rate includes Western's cost for transmission scheduling, and system control and dispatch service associated with COTP transmission. The proposed formula rate applies to COTP point-to-point transmission service. The rates resulting from Component 1 of the proposed formula rate may be discounted for short-term sales and revenue from COTP unreserved use penalties.

The estimated rates resulting from the proposed formula rate are subject to change prior to the rates taking effect. The rates resulting from the proposed formula rate for the winter season will be finalized by Western on or before October 15, 2011.

Proposed Rate Schedule PACI–T3 (Supersedes Schedule PACI–T2)

Proposed Formula Rate for PACI Point-to-Point Transmission Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving PACI firm and/or non-firm point-to-point transmission service.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Formula Rate: The proposed formula rate for PACI firm and non-firm transmission includes three components:

Component 1:

$$\frac{\text{PACI TRR}}{\text{Western's PACI Seasonal Capacity}}$$

Where:

PACI TRR = PACI Seasonal TRR includes Western's costs associated with facilities that support the transfer capability of the PACI.

Western's PACI Seasonal Capacity = Western's share of PACI capacity (subject to curtailment) under the current COI transfer capability for the season. The three seasons are defined as follows: Summer—June through October; Winter—November through March; and Spring—April through May.

Western will update the formula rate resulting from Component 1 at least 15 days before the start of each COI rating season. Rate change notifications will be posted on the OASIS.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

The proposed formula rate for PACI non-firm transmission includes the same three components used in the proposed formula rate for PACI firm transmission.

Rate Comparison

The estimated firm and non-firm point-to-point rates resulting from Component 1 of the proposed formula rate for PACI transmission service are shown in the example below.

EXAMPLE—COMPARISON OF EXISTING RATES TO ESTIMATED RATES OF THE PROPOSED FORMULA RATE FOR PACI FIRM AND NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE

Season	Existing firm rate	Estimated firm rate	Rate change (percent)
Spring	$1.14 ($/MWh)	$1.16 ($/MWh)	1.02
Summer	$1.13 ($/MWh)	$1.16 ($/MWh)	1.02
Winter	$1.15 ($/MWh)	$1.17 ($/MWh)	1.02

The estimated firm, point-to-point PACI transmission service rate increased slightly due to an inflationary increase of costs not a rate methodology change.

Rate Recovery and Application

The proposed formula rate for PACI transmission service is based on a RR that recovers: (1) The PACI transmission system costs for facilities associated with providing transmission service; (2) the non-facility costs allocated to transmission service; (3) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; (4) the pass through of the HBA's charges or credits; (5) any other statutorily-required costs or charges; and (6) any other costs associated with transmission service including uncollectible debt.

The proposed formula rate includes Western's cost for transmission scheduling, system control and dispatch service. The proposed formula rate applies to PACI firm and non-firm point-to-point transmission service. The rates resulting from Component 1 of the proposed formula rate may be discounted for short-term sales and revenue from PACI unreserved use penalties. The estimated rates resulting from the proposed formula rate are subject to change prior to the rates taking effect. The rates resulting from the proposed formula rate for the winter season will be finalized by Western on or before October 15, 2011.

Proposed Rate Schedule CV–TPT7 (Supersedes CV–TPT6)

Schedule of Rate for Transmission of Western Power by Others

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To Western's power service customers who require transmission service by a third party to receive power sold by Western.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points as agreed to by the parties.

Formula Rate: The proposed formula rate for transmission of Western's power by others includes three components.

Component 1: When Western uses transmission facilities other than its own in supplying Western power and costs are incurred by Western for the use of such facilities, the customer will pay all costs, including transmission losses, incurred in the delivery of such power.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Third-party transmission will be billed monthly under the formula rate.

Adjustments for losses: All losses incurred for delivery of power under this rate schedule shall be the responsibility of the customer that received the power.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the RR under this rate schedule will be evaluated on a case-by-case basis to

determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Effective October 1, 2011, the cost of this service is not changing from the existing methodology and all costs are pass through under this rate schedule.

Rate Recovery and Application

These costs are fully recovered from the beneficiaries receiving this service, and this is not changing from the existing rate methodology.

Proposed Rate Schedule CV–UUP1 (New Rate Schedule)

Schedule of Rate for Unreserved Use Penalties

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To transmission customers using transmission not reserved or in excess of reservation.

Character and Conditions of Service: Transmission service for three-phase, alternating current at 60 hertz, delivered and metered at the voltages and points of delivery or receipt, adjusted for losses, and delivered to points of delivery. This service includes scheduling and system control and dispatch service needed to support the transmission service.

Summary

Western proposes to add a penalty rate for unreserved use of transmission for the CVP, COTP, and PACI in a new rate schedule, Rate Schedule CV–UUP1.

Penalty Rate

The rate for Unreserved Use Penalties service is 150 percent of the approved transmission service rate for point-to-point transmission service assessed as described above, plus 100 percent of the approved ancillary service rates if applicable.

Component 1: Unreserved Use Penalties service is provided when a transmission customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. A transmission customer that has not secured reserved capacity or exceeds its firm or non-firm reserved capacity at any point of receipt or any point of delivery will be assessed Unreserved Use Penalties.

The penalty charge for a transmission customer who engages in unreserved use is 150 percent of Western's approved transmission service rate for point-to-point transmission service assessed as follows: (1) The Unreserved Use Penalty for a single hour of unreserved use will be based upon the rate for daily firm point-to-point service; (2) the Unreserved Use Penalty for more than one assessment for a given duration (*e.g.,* daily) will increase to the next longest duration (*e.g.,* weekly); and (3) the Unreserved Use Penalty for multiple instances of unreserved use (*e.g.,* more than 1 hour) within a day will be based on the rate for daily firm point-to-point service. The penalty charge for multiple instances of unreserved use isolated to 1 calendar week would result in a penalty based on the charge for weekly firm point-to-point service. The penalty charge for multiple instances of unreserved use during more than 1 week within a calendar month is based on the charge for monthly firm point-to-point service.

Unreserved Use Penalties will not apply to transmission customers utilizing point-to-point transmission service under Western's OATT as a result of action taken to support reliability. Such actions include reserve activations or uncontrolled event response as directed by the responsible reliability authority such as SBA, HBA Reliability Coordinator, or Transmission Operator.

A transmission customer that exceeds its firm or non-firm reserved capacity is required to pay for all ancillary services identified in Western's OATT associated with the unreserved use of transmission service. The transmission customer or eligible customer will pay for ancillary services based on the amount of transmission service it used but did not reserve. No penalty will be applied to the ancillary service charges.

Unreserved Use Penalties collected over and above the base firm or non-firm point-to-point charge will be distributed to customers as a credit on future TRRs.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the penalty rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the penalty rate.

Rate Comparison

This is a new rate schedule effective October 1, 2011, through September 30, 2016.

Rate Recovery and Applicability

The rate recovers the cost of transmission and applies a penalty for such unreserved use. The revenue resulting from the penalty portion will be distributed as a credit to the relevant TRRs. The penalty rate is applicable for all unreserved use of transmission and transmission in excess of reservation except, as may be determined by Western, in emergencies or reserve sharing activations. Western will provide written notification 30 days in advance to its transmission customers prior to implementing this penalty rate and will also post a notification on its OASIS Web site indicating the implementation of Unreserved Use Penalties.

Proposed Rates for Ancillary Services

This section includes proposed rates for the following services: spinning reserve, supplemental reserve, regulation and frequency response, EI and GI. Western's costs for providing transmission scheduling, system control and dispatch service, and reactive supply and voltage control are included in the appropriate transmission or BR and FP power formula rates.

Proposed Rate Schedule CV–SPR4 (Supersedes Schedule CV–SPR3)

Proposed Formula Rate for Spinning Reserve Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving spinning reserve service.

Character and Conditions of Service: Spinning reserve service supplies capacity that is available immediately to take load and is synchronized with the power system.

Formula Rate: The formula rate for spinning reserve includes three components:

Component 1: The formula rate for spinning reserve service is the price consistent with the CAISO's market plus all costs incurred as a result of the sale of spinning reserves such as Western's scheduling costs.

For customers that have a contractual obligation to provide spinning reserve to Western and do not fulfill that obligation, the penalty for non-performance is the greater of actual cost or 150 percent of the market price.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above will be applied to the amount of spinning reserve sold. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Western is not proposing a change to the existing formula rate methodology for spinning reserve service.

Rate Recovery and Application

The spinning reserve charge is calculated for each hour during the month in order to derive the total monthly charge. The proposed formula rate for spinning reserve service is as follows: (1) A price consistent with the CAISO's market price; (2) all costs incurred as a result of the sale of spinning reserves, such as Western's scheduling costs; (3) the cost of energy, capacity, or generation that supports spinning reserve service; (4) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; (5) the pass through of the HBA's charges or credits; and (6) any other statutorily required costs or charges. For customers that have a contractual obligation to provide spinning reserve to Western and do not fulfill that obligation, the penalty for non-performance is the greater of actual cost or 150 percent of the market price.

The cost for spinning reserve required to firm CVP generation for the current hour and the following hour is included in the PRR. Spinning reserves surplus to those required to support the SBA and firm CVP generation may be sold. Surplus spinning reserves will be sold at prices consistent with the CAISO markets. Revenues from the sale of surplus spinning reserves will offset the PRR. The spinning reserve formula rate will apply to SBA customers who contract with Western to provide this service.

Proposed Rate Schedule CV–SUR4 (Supersedes Schedule CV–SUR3)

Proposed Formula Rate for Supplemental Reserve Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving supplemental reserve service.

Character and Conditions of Service: Supplemental reserve service supplies capacity that is available within the first 10 minutes to take load and is synchronized with the power system.

Formula Rate: The formula rate for supplemental reserve service includes three components:

Component 1: The formula rate for supplemental reserve service is the price consistent with the CAISO's market plus all costs incurred as a result of the sale of supplemental reserves, such as Western's scheduling costs.

For customers that have a contractual obligation to provide supplemental reserve service to Western and do not fulfill that obligation, the penalty for non-performance is the greater of actual cost or 150 percent of the market price.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: The formula rate above will be applied to the amount of supplemental reserve service sold. Billing will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Western is not proposing a change to the existing formula rate methodology for supplemental reserve service.

Rate Recovery and Application

The formula rate for supplemental reserve service is as follows: (1) A price consistent with the CAISO's market price; (2) all costs incurred as a result of the sale of supplemental reserve service, such as Western's scheduling costs; (3) the cost of energy, capacity, or generation that supports supplemental reserve service; (4) the pass through of the HBA's charges or credits; (5) the pass through of FERC's or other regulatory body's accepted or approved charges or credits; and (6) any other statutorily required costs or charges.

For customers that have a contractual obligation to provide supplemental reserve to Western and do not fulfill that obligation, the penalty for non-

performance is equal to the greater of actual cost of generation or 150 percent of the market price.

The cost for supplemental reserves required to firm CVP generation for the current hour and the following hour is included in the PRR. Supplemental reserve service surplus to those required to support the SBA and firm CVP generation may be sold. Surplus supplemental reserves will be sold at prices consistent with the CAISO markets. Revenues from the sale of supplemental reserves will offset the PRR. The supplemental reserve formula rate will apply to SBA customers who contract with Western to provide this service.

Proposed Rate Schedule CV–RFS4 (Supersedes Schedule CV–RFS3)

Proposed Formula Rate for Regulation and Frequency Response Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving Regulation and Frequency Response Service (Regulation).

Character and Conditions of Service: Regulation is necessary to provide for the continuous balancing of resources and interchange with load and for maintaining scheduled interconnection frequency at 60 cycles per second.

Formula Rate: The proposed formula rate for Regulation includes three components:

Component 1:

$$\frac{\text{Annual Revenue Requirement}}{\text{Annual Regulating Capacity Kilowatt}}$$

The annual RR includes: (1) The CVP generation costs associated with providing Regulation; and (2) the non-facility costs allocated to Regulation.

The annual regulating capacity is one-half of the total regulating capacity bandwidths provided by Western under the interconnected operations agreements with SBA members.

The penalty for nonperformance by an SBA customer who has committed to self-provision for their regulating capacity requirement will be the greater of actual costs or 150 percent of the market price.

Western will revise the formula rate resulting from Component 1 based on either of the following two conditions: (1) Updated financial data available in March of each year; or (2) a change in the numerator or denominator that results in a rate change of at least $0.25 per kWmonth.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Rate Comparison

Western is not proposing a change to the existing formula rate methodology. The Regulation rate effective October 1, 2010, is $4.65 per kWmonth. Based on the existing threshold for a rate change of $0.25, we do not expect the rate to change effective October 1, 2011.

Rate Recovery and Application

The annual RR includes: (1) The CVP generation costs associated with providing Regulation; and (2) the non-facility costs allocated to Regulation.

The Regulation RR will be recovered from SBA customers that have contracted with Western for this service. The revenues from Regulation service will be applied to the PRR. The estimated RR resulting from the proposed formula rate is subject to change prior to the rates taking effect. The RR will be finalized by Western on or before October 1, 2011.

Proposed Rate Schedule CV–EID4 (Supersedes Schedule CV–EID3)

Proposed Formula Rate for Energy Imbalance Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To customers receiving EI service.

Character and Conditions of Service: EI is provided when a difference occurs between the scheduled and the actual delivery of energy to a load within the SBA over an hour or in accordance with approved policies and procedures. The deviation, in MW, is the net scheduled amount of energy minus the net metered (actual delivered) amount.

EI service uses the deviation bandwidth that is established in the service agreement or Interconnected Operations Agreements (IOA).

Formula Rate: The formula rate for EI service includes three components:

Component 1: EI service is applied to deviations as follows: (1) For deviations within the bandwidth, there will be no financial settlement; rather, EI will be tracked and settled with energy; (2) negative deviations (under delivery), outside the deviation bandwidth, will be charged the greater of 150 percent of market price or actual cost; and (3) positive deviations (over delivery), outside the deviation bandwidth, will be lost to the system.

Deviations which occur as a result of actions taken to support reliability will be resolved in accordance with existing contractual requirements. Such actions include reserve activations or uncontrolled event responses as directed by the responsible reliability authority such as SBA, HBA, Reliability Coordinator, or Transmission Operator.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved

charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for negative deviations outside the bandwidth will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

Western is not proposing a change to the existing formula rate methodology. Any changes to EI charges result from changes to actual cost or market prices.

Rate Recovery and Application

Western is proposing to maintain its existing tier methodology for EI. While FERC Order No. 890 defines a three-tier methodology, it allows alternatives to *pro forma* design if the rate schedule follows the intent of the three principles: (1) Charges based on incremental cost or some multiple thereof; (2) charges must provide incentive for accurate scheduling; and (3) provisions address intermittent renewable resources (wind/solar) limited forecasting abilities by waiver of the most punitive penalties.

Western's existing EI rate schedule follows the intent by: (1) Charges under a tiered methodology where, within the bandwidth, energy is exchanged, over deliveries are lost to the system, and under deliveries are charged the greater of 150 percent of the CAISO market price or Western's actual cost; (2) penalties outside the bandwidth also provide incentives for good scheduling practices; and (3) to the extent that an entity incorporates intermittent resources, Western proposes eliminating the 150 percent of market price factor for under deliveries. Western will charge the greater of market price or Western's actual cost.

Given that Western's customers will be operating under existing agreements during the applicable rate period, Western will review FERC Order No. 890 *pro forma* approach, as well as Western's existing settlements and billing processes and will consider a transition to FERC's *pro forma* tariff methodology during Western's next rate process or earlier if deemed appropriate.

Accordingly, for deviations outside of the bandwidth, the EI service charge is recovered using the greater of 150 percent of the market price or Western's actual cost. The actual cost is calculated using CVP generation RR and associated energy. Additional costs subject to recovery include HBA's charges or credits, FERC's or other regulatory body's accepted or approved charges or credits, and any other statutorily-required costs or charges.

The EI service charge will be recovered from SBA customers that have contracted with Western for this service. The revenues from EI service will be applied to the PRR. Since the actual cost is calculated based on Western's cost of generation, it is subject to change prior to the effective rate period.

Below is an example of how the EI charge is calculated using Component 1.

ENERGY IMBALANCE CHARGE EXAMPLE CALCULATION (COMPONENT 1)

[On October 1, HE 1, Customer A has:]

Scheduled Net Interchange	90 MW
Actual Net Interchange	102 MW
Actual Energy in excess of Scheduled	12 MW
Contractual Bandwidth	8 MW
Energy Imbalance for HE 1	4 MW

To derive the total monthly charge for Customer A, the EI is calculated for each hour that it occurs during the month.

The EI charge is based upon a comparison between the real-time energy pricing from the CAISO for each hour multiplied by 150 percent and Western's actual cost for that same hour. The higher of the two is applied to derive the EI charge. EI charge for October 1, HE 1, is calculated as follows:

October 1, Hour Ending 1	Price	Price comparison	MW	Charge
Western's Calculated Actual Cost	$18.27	Actual < 150% of Market	N/A	N/A
Real Time CAISO price ($21.84 * 150%) applied per rate schedule.	32.76	150% Market > Actual	4	$131.04

Note: EI charge for October 1, HE 1, is calculated as follows: 4 MW * $32.76 = $131.04

Imbalances that occur as a result of action taken by the generator, at Western's request, to support reliability will not be subject to penalties. Such actions include directives by SBA, HBA, Reliability Coordinators, or reserve activations and frequency correction initiatives.

To the extent that an entity incorporates variable resources, treatment of such will be determined in the associated contract.

Proposed Rate Schedule CV–GID1 (New Rate Schedule)

Schedule of Rate for Generator Imbalance Service

Effective: October 1, 2011, through September 30, 2016.

Available: Within the marketing area served by SNR.

Applicable: To generators receiving GI.

Character and Conditions of Service: GI is provided when a difference occurs between the scheduled and actual delivery of energy from an eligible generation resource within the SBA, over an hour, or in accordance with approved policies and procedures. The deviation in MW is the net scheduled amount of generation minus the net metered output from the generator's (actual generation) amount.

GI is subject to the deviation bandwidth to be established in the service agreement or IOA.

Formula Rate: The formula rate for the GI has three components:

Component 1: GI is applied to deviations as follows: (1) For deviations within the bandwidth, there will be no financial settlement; rather, GI will be tracked and settled with energy; (2) negative deviations (under delivery), outside the deviation bandwidth, will be charged the greater of 150 percent of market price or actual cost; and (3)

positive deviations (over delivery), outside the deviation bandwidth, will be lost to the system.

Deviations which occur as a result of actions taken to support reliability will be resolved in accordance with existing contractual requirements. Such actions include reserve activations or uncontrolled event responses as directed by the responsible reliability authority such as SBA, HBA, Reliability Coordinator, or Transmission Operator.

To the extent that an entity incorporates intermittent resources, deviations will be charged as follows: (1) For deviations within the bandwidth, there will be no financial settlement; rather, GI will be tracked and settled with energy; (2) negative deviations (under delivery), outside the deviation bandwidth, will be charged the greater of market price or actual cost; and (3) positive deviations (over delivery), outside the deviation bandwidth, will be lost to the system.

Component 2: Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory body will be passed on to each relevant customer. The FERC's or other regulatory body's accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory body's accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory body's accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3: Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing: Billing for negative deviations outside the bandwidth will occur monthly.

Adjustment for Audit Adjustments: Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

Rate Comparison

This is a new rate schedule effective October 1, 2011, through September 30, 2016.

Rate Recovery and Application

Western is proposing to adopt its existing EI methodology for GI. Similar to EI, FERC Order No. 890 defines a three-tier methodology for GI. The order allows alternatives to *pro forma* design if the rate schedule follows the intent of the three principles: (1) Charges based on incremental cost or some multiple thereof; (2) charges must provide incentive for good scheduling practice; and (3) provisions address intermittent renewable resources (wind/solar) to waive punitive penalties.

Similar to Western's existing EI rate schedule, GI will follow the intent by: (1) Charges under a tiered methodology; where, within the bandwidth, energy is exchanged, over deliveries are lost to the system, and under deliveries are charged the greater of 150 percent of the CAISO market price or Western's actual cost; (2) penalties outside the bandwidth also provide incentives for good scheduling practices; and (3) to the extent that an entity incorporates intermittent resources, Western proposes eliminating the 150 percent of market price factor for under deliveries. Western will charge the greater of market price or Western's actual cost.

Currently, Western has no existing customers under GI. Western will review FERC Order No. 890 *pro forma* approach, as well as Western's existing settlements and billing processes and will consider a transition to FERC's *pro forma* tariff methodology during Western's next rate process or earlier if deemed appropriate.

Accordingly, for deviations outside of the bandwidth, the GI charge is recovered using the greater of 150 percent of the market price or Western's actual cost. The actual cost is calculated using CVP generation RR and associated energy. Additional costs subject to recovery include HBA's charges or credits, FERC's or other regulatory body's accepted or approved charges or credits, and any other statutorily required costs or charges.

The GI charge will be recovered from SBA customers that have contracted with Western for this service. The revenues from GI will be applied to the PRR. Since the actual cost is calculated based on Western's cost of generation, it is subject to change prior to the effective rate period.

Below is an example of how the GI charge is calculated using Component 1.

GENERATION IMBALANCE SERVICE CHARGE EXAMPLE CALCULATION (COMPONENT 1)

[If, on October 1, HE 1, Customer A has:]

Scheduled Net Interchange	102 MW
Actual Net Interchange	90 MW
Scheduled Generation in excess of Actual Generation (under delivery)	12 MW
Contractual Bandwidth	8 MW
Generator Imbalance for HE 1	4 MW

To derive the total monthly charge for Customer A, the GI is calculated for each hour that it occurs during the month.

The GI charge is based upon a comparison between the real-time energy pricing from the CAISO for each hour multiplied by 150 percent and Western's actual cost for that same hour. The greater of the two is applied to derive the GI charge. The following table is an example of how Western determines the GI charge related to the GI in the table above:

October 1, Hour Ending 1	Price	Price comparison	MW	Charge
Western's Calculated Actual Cost	$18.27	Actual < 150% of Market	N/A	N/A
Real Time CAISO price ($21.84 * 150%) applied per rate schedule.	32.76	150% Market > Actual	4	$131.04

Note: GI charge for October 1, HE 1 is calculated as follows: 4 MW * $32.76 = $131.04

GI charges will not apply as a result of action taken to support reliability. Such actions include reserve activations or uncontrolled event response as directed by the responsible reliability authority, such as, SBA, HBA, Reliability Coordinator, or Transmission Operator.

To the extent that an entity incorporates VRs, treatment of such will be determined in the associated contract.

GI and EI service charges/energy accounting will be netted within the hour, or in accordance with approved policies and procedures, with charges for both services allowable only when the imbalances for both are deficit rather than offsetting (note that this only applies to netting within the bandwidth).

Potential Example of an Addition Presented above:

Transmission Provider or SBA can charge customer for both GI and EI service in the same hour, but not if the imbalances offset each other.

Example of Offsetting:

- For example—Customer A
  - 〉〉 GI:–10MW deficit
  - 〉〉 EI service: 5MW surplus
  - 〉〉 Customer A charged: 5MW (GI charge)

Example of Aggravating (increasing—absolute value)

- For example—Customer B
  - 〉〉 GI Service:–10MW deficit
  - 〉〉 EI service:–10MW deficit
  - 〉〉 Customer A charged:–10MW for GI charge plus -10MW for EI charge

Legal Authority

These proposed rates for COTP, PACI, CVP transmission, Western power, and related services are being established pursuant to the DOE Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed rates are available for inspection and copying at the Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, California.

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA analysis.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: December 22, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–33108 Filed 12–30–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9245–9]

Notice of Prevention of Significant Deterioration Final Determination for Russell City Energy Center

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of final action.

SUMMARY: This notice announces that on November 18, 2010, the Environmental Appeals Board (EAB) of the EPA denied Petitions for Review of a Federal Prevention of Significant Deterioration (PSD) Permit issued to Russell City Energy Center, LLC by the Bay Area Air Quality Management District ("BAAQMD").

DATES: The effective date for the EAB's decision is November 18, 2010. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a Petition for Review in the United States Court of Appeals for the Ninth Circuit on or before March 4, 2011.

ADDRESSES: The documents relevant to this notice are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105. To arrange viewing of these documents, call Shaheerah Kelly at (415) 947–4156. Due to building security procedures, please call Ms. Kelly at least 24 hours before you would like to view the documents.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/.*

SUPPLEMENTARY INFORMATION: *Notification of EAB Final Decision:* The BAAQMD, acting under authority of a PSD delegation agreement dated February 4, 2008, issued a PSD permit to Russell City Energy Center, LLC, on February 3, 2010, granting approval to construct a new 600-megawatt natural gas-fired combined-cycle power plant in Hayward, California. Five petitioners filed timely Petitions for Review of the PSD decision with the EAB. The EAB issued an Order denying the Petitions for review on November 18, 2010. One petitioner filed a Motion and Supplemental Motion for Reconsideration and/or Clarification and Stay of the EAB's November 18, 2010 Order.

On December 17, 2010, the EAB issued an Order denying the Motion and Supplemental Motion for Reconsideration and/or Clarification and Stay.

Dated: December 20, 2010.

Kerry Drake,

Acting Director, Air Division, Region 9.

[FR Doc. 2010–32969 Filed 12–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9247–1]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Smyrna, DE

SUMMARY: The EPA is hereby granting a waiver of the Buy American Requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Smyrna, DE ("Town"), for the purchase of GreensandPlus pressure filter media, manufactured in Brazil, for six pressure filters. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any

other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The Town evaluated eight different types of pressure filter media selecting GreensandPlus filter media. The ARRA funded project is for Well House upgrades that include filter media replacement, two filters in Well House #1, two filters in Well House #2 and two filters in Well House #3 in the Smyrna system. If an alternate domestic filter media were to be installed in the six pressure filters, the Town's system would experience increased backwash requirements, reduced capacity and would need modifications/replacement of underdrain and filter piping. Based upon information submitted by the Town and its consulting engineer, EPA has concluded that there are no filter media manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance.

The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action permits the purchase of GreensandPlus pressure filter media for the proposed project being implemented by the Town of Smyrna.

DATES: *Effective Date:* December 9, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Town of Smyrna, Delaware for the purchase of non-domestic GreensandPlus pressure filter media for six pressure filters. EPA has evaluated the Town's basis for procuring the GreensandPlus pressure filter media for these filters. Based upon information submitted by the Town and its consulting engineer, EPA has concluded that there are no filter media manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications for the Town to pursue the purchase of domestically manufactured filter media.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has determined that Town's waiver request may be treated as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA has evaluated the Town's request to determine if the request, though made after the contract date, can be treated as if it were timely made. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the Town's request may be treated as timely because the need for a waiver was not foreseeable at the time the contract was signed. The project was bid and the general contractor submitted documentation that Greensand filter media utilized in preparing their bid met the ARRA Buy American provisions. The need for a waiver was not determined until after the contract was signed, when the contractor was informed by the manufacturer of Greensand that they were no longer making this product and recommended the GreensandPlus pressure filter media as an alternative product. They then were notified that the GreensandPlus pressure filter media was made in Brazil. Accordingly, EPA will evaluate the request as a timely request.

The Town is requesting a waiver of the Buy American provision for the GreensandPlus filter media for six pressure filters. The Town has three well houses that each contains two pressure filters for their water treatment system. The project involves the replacement of standard manganese greensand in three well houses. The Town provided supporting documentation that the manufacturer, Inversand Company (Inversand), has temporarily shut down production of manganese greensand. Inversand advised its customers to instead use its GreensandPlus filter media, which is manufactured in Brazil, as an alternative product. The Town has stated that GreensandPlus filter media is compatible with existing treatment facilities, and the use of GreensandPlus filter media is expected to reduce overall operational costs. Detailed evaluation of all of the submitted documentation by EPA Region III, Office of Infrastructure and Assistance, and EPA's national contractor indicates that the Town did not know that the GreensandPlus filter media was made in Brazil until after the project was awarded. In addition, submitted documentation showed that the Town would require replacement/modification of the existing underdrain and associated filter piping if any of the other filter media were used in the project. Due to the existing backwash piping configuration, a lower backwash rate is needed which could be attained by the GreensandPlus filter media without replacement of the underdrain or piping. The GreensandPlus filter media will be capable of treating the raw water presently produced by the Town, removing iron and other impurities to comply with all State of Delaware Drinking Water Quality Regulations. Thus, the use of domestic filter media would require replacement of the underdrain and associated piping which would increase the cost of the project. In addition, the evaluation of the supporting documentation also demonstrated that the foreign filter media will be able to meet the proposed project design and specifications with no additional cost to the Town.

The Town has provided information to the EPA demonstrating that there are no filter media manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specifications. Eight domestic manufacturers of filter media were considered for this project but did not meet the specifications for the project.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009", defines

reasonably available quantity as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The Town has incorporated specific technical design requirements for installation of filter media at their three Well Houses.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring utilities, such as the Town, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs. The OIA has reviewed this waiver request and to the best of our knowledge at the time of review has determined that the supporting documentation provided by the Town is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum:" Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Town's technical specifications, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Town of Smyrna is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of GreensandPlus filter media using ARRA funds as specified in the Town of Smyrna's request of October 1, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111–5, section 1605.

Dated: December 9, 2010.

W.C. Early,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2010–33111 Filed 12–30–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 20, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Richard M. Connor, Jr., Laona, Wisconsin,* to acquire and retain 25 percent or more of the voting shares of Northern Wisconsin Bank Holding Company, Inc., and thereby indirectly acquire and retain voting shares of Laona State Bank, both of Laona, Wisconsin.

Board of Governors of the Federal Reserve System, December 28, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–33080 Filed 12–30–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below has been submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through February 28, 2014, the current clearance under OMB Control Number 3084–0108 for information collection requirements contained in its Used Motor Vehicle Trade Regulation Rule ("Used Car Rule" or "Rule"). That clearance expires on February 28, 2011.

DATES: Comments must be filed by February 2, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following Web link: *https://ftc.public.commentworks.com/ftc/UsedCarRulePRA2* (and following the instructions on the Web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to John C. Hallerud, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe, Suite 1825, Chicago, Illinois 60603, (312) 960–5634.

SUPPLEMENTARY INFORMATION: The Used Car Rule facilitates informed purchasing decisions by requiring used car dealers to disclose information about warranty coverage, if any, and the mechanical condition of used cars that they offer for sale. The Rule requires that used car dealers display a form called a "Buyers Guide" on each used car offered for sale that, among other things, discloses information about warranty coverage.

Request for Comments

Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3521, Federal agencies must obtain approval from

OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Comments should refer to "Used Car Rule: FTC File No. P067609" to facilitate the organization of comments. Please note that your comment B including your name and your State B will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following Web link *https://ftc.public.commentworks.com/ftc/UsedCarRulePRA2* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link *https://ftc.public.commentworks.com/ftc/UsedCarRulePRA2.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

All comments should additionally be sent to OMB. Comments may be submitted by U.S. Postal Mail to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments, however, should be submitted via facsimile to (202) 395–5167 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Burden Statement

On October 12, 2010, the FTC sought comment on the information collection requirements associated with the Rule, 16 CFR part 455. 75 FR 62538. No comments were received. Accordingly, the FTC retains its previously published burden estimates.

Estimated total annual hours burden: 1,974,589 hours.

The Rule has no recordkeeping requirements. The estimated burden relating solely to disclosure requirements is 1,974,589 hours. As explained in more detail below, this estimate is based on the number of used car dealers (53,735 [2]), the number of used cars sold by dealers annually (approximately 24,531,374 [3]), and the time needed to fulfill the information collection tasks required by the Rule.[4]

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide on each used car that they offer for sale. The component tasks associated with the Rule's required display of Buyers Guides include: (1) Ordering and stocking Buyers Guides; (2) entering data on Buyers Guides; (3) displaying the Buyers Guides on vehicles; (4) revising Buyers Guides as necessary; and (5) complying with the Rule's requirements for sales conducted in Spanish.

1. Ordering and Stocking Buyers Guides: Dealers should need no more than an average of two hours per year to obtain Buyers Guides, which are readily available from many commercial printers or can be produced by an office word-processing or desk-top publishing system.[5] Based on a population of 53,735 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 107,470 hours.

2. Entering Data on Buyers Guides: The amount of time required to enter applicable data on Buyers Guides may vary substantially, depending on whether a dealer has automated the process. For used cars sold "as is," copying vehicle-specific data from dealer inventories to Buyers Guides and checking the "No Warranty" box may take two to three minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process or use pre-printed forms. Staff estimates that this task will require an average of two minutes per Buyers Guide. Similarly, for used cars sold under warranty, the time required to check the "Warranty" box and to add warranty information, such as the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] CNW Marketing Research, Inc. As of July 2010, CNW lists 15,631 new vehicle franchised outlets with used car operations and 38,104 independent used car outlets, for a total of 53,735 used car dealers.

[3] *Id.* This figure reflects total used car sales by franchised and independent dealers in 2009, the most recent complete annual figures available.

[4] Some dealers opt to contract with outside contractors to perform the various tasks associated with complying with the Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to "dealers," incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule. In addition, the time estimates that follow repeat those that the FTC published in the 2007 PRA clearance renewal-related **Federal Register** notices (72 FR 46487 (Aug. 20, 2007); 72 FR 71911 71912 (Dec. 19, 2007)) without receiving public comment. Absent prospective specific industry estimates to the contrary, staff will continue to apply these estimates, which staff believes are reasonable.

[5] Buyers Guides are also available online from the FTC's Web site, *http://www.ftc.gov,* as links to *A Dealer's Guide to the Used Car Rule* at *http://www.ftc.gov/bcp/edu/pubs/business/autos/bus13.shtm.*

additional information required in the Percentage of Labor/Parts and the Systems Covered/Duration sections of the Buyers Guide, will depend on whether the dealer uses a manual or automated process or Buyers Guides that are pre-printed with the dealer's standard warranty terms. Staff estimates that these tasks will take an average of one additional minute, *i.e.,* cumulatively, an average total time of three minutes for each used car sold under warranty.

Staff estimates that approximately fifty percent of used cars sold by dealers are sold "as is," with the other half sold under warranty. Therefore, staff estimates that the overall time required to enter data on Buyers Guides consists of 408,856 hours for used cars sold without a warranty (24,531,374 vehicles × 50% × 2 minutes per vehicle) and 613,284 hours for used cars sold under warranty (24,531,374 vehicles × 50% × 3 minutes per vehicle) for a cumulative estimated total of 1,022,140 hours.

3. Displaying Buyers Guides on Vehicles: Although the time required to display the Buyers Guides on each used car may vary substantially, FTC staff estimates that dealers will spend an average of 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle. The estimated burden associated with this task is approximately 715,498 hours for the 24,531,374 vehicles sold in 2009 (24,531,374 vehicles × 1.75 minutes per vehicle).

4. Revising Buyers Guides as Necessary: If negotiations between the buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Buyers Guide to reflect the actual terms of sale. According to the original rulemaking record, bargaining over warranty coverage rarely occurs. Staff notes that consumers often do not need to negotiate over warranty coverage because they can find vehicles that are offered with the desired warranty coverage online or in other ways before ever contacting a dealer. Accordingly, staff assumes that the Buyers Guide will be revised in no more than two percent of sales, with an average time of two minutes per revision. Therefore, staff estimates that dealers annually will spend approximately 16,354 hours revising Buyers Guides (24,531,374 vehicles × 2% × 2 minutes per vehicle).

5. Spanish Language Sales: The Rule requires that contract disclosures be made in Spanish if a sale is conducted in Spanish.[6] The Rule permits displaying both an English and a Spanish language Buyers Guide to comply with this requirement.[7] Many dealers with large numbers of Spanish-speaking customers likely will post both English and Spanish Buyers Guides to avoid potential compliance violations.

Calculations from United States Census Bureau surveys indicate that approximately 6.5 percent of the United States population speaks Spanish at home, without also speaking fluent English.[8] Staff therefore projects that approximately 6.5 percent of used car sales will be conducted in Spanish. Dealers will incur the additional burden of completing and displaying a second Buyers Guide in 6.5 percent of sales assuming that dealers choose to comply with the Rule by posting both English and Spanish Buyers Guides. The annual hours burden associated with completing and posting Buyers Guides is 1,737,638 hours (1,022,140 hours for entering data on Buyers Guides plus 715,498 hours for displaying Buyers Guides). Therefore, staff estimates that the additional burden caused by the Rule's requirement that dealers display Spanish language Buyers Guides when conducting sales in Spanish is 112,947 hours (1,737,638 hours × 6.5%). The other components of the annual hours burden, *i.e.,* purchasing Buyers Guides and revising them for changes in warranty coverage, remain unchanged.

Estimated annual cost burden: $26,301,525 in labor costs and $4,906,275 in non-labor costs.

1. Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed, including the corresponding tasks associated with Spanish Buyers Guides, are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $13.32 per hour[9] and an estimated burden of 1,974,589 hours for disclosure requirements, the total labor cost burden would be approximately $26,301,525.

2. Capital or other non-labor costs: Although the cost of Buyers Guides can vary considerably, based on industry input staff estimates that the average cost of each Buyers Guide is twenty cents. The estimated cost of Buyers Guides for the 24,531,374 used cars sold by dealers in 2009 is approximately $4,906,275. In making this estimate, staff conservatively assumes that all dealers will purchase preprinted forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are minimal.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2010–33110 Filed 12–30–10; 8:45 am]

BILLING CODE 6750–01–P

[6] 16 CFR 455.5.

[7] *Id.*

[8] U.S. Census Bureau, Table S1601. Language Spoken at Home. 2008 American Community Survey 1-Year Estimates, available at: *http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_1YR_G00_S1601&-geo_id=01000US&-ds_name=ACS_2008_1YR_G00_&-_lang=en&-redoLog=false&-CONTEXT'st.* The table indicates that 12.2% of the United States population 5 years or older speaks Spanish or Spanish Creole in the home and 46.7% of these in-home Spanish speakers speak English less than "very well."

[9] The hourly rate is based on Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general. Occupational Employment and Wages, May 2009, available at *http://www.bls.gov/oes/current/oes439061.htm#nat.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health; Correction

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice: Correction.

SUMMARY: The Department of Health and Human Services published a notice in the **Federal Register** of December 21, 2010 announcing a meeting of the Advisory Committee on Minority Health. It was announced that this meeting would be held on Monday, January 10, 2011 from 9 a.m. to 5 p.m. and Tuesday, January 11, 2011 from 9 a.m. to 1 p.m. Due to unforseen circumstances the meeting date has been changed.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Phone: 240–453–2882 Fax: 240–453–2883.

Correction

In the **Federal Register** of December 21, 2010, Vol. 75, No. 244, on page 80055, in the 2nd column, correct the **DATES** caption to read:

The meeting will be held on Monday, February 21, 2011 from 9 a.m. to 5 p.m. and Tuesday, February 22, 2011 from 9 a.m. to 1 p.m.

Dated: December 28, 2010.

Mirtha Beadle,

Deputy Director, Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2010–33084 Filed 12–30–10; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11BM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, Acting CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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. Written comments should be received within 60 days of this notice.

Proposed Project

Healthcare System Surge Capacity at the Community Level—New—National Center for Emerging and Zoonotic Infectious Diseases, (NCEZID), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

The Healthcare Preparedness Activity, Division of Healthcare Quality Promotion (DHQP) at the Centers for Disease Control and Prevention (CDC) works with other Federal agencies, State governments, medical societies and other public and private organizations to promote collaboration amongst healthcare partners, and to integrate healthcare preparedness into Federal, State and local public health preparedness planning. The goal of the Activity is to help local communities' healthcare delivery and public health sectors effectively and efficiently prepare for and respond to urgent and emergent threats.

Surge is defined as a marked increase in demand for resources such as personnel, space and material. Health care providers manage both routine surge (predictable fluctuations in demand associated with the weekly calendar, for example) as well as unusual surge (larger fluctuations in demand caused by rarer events such as pandemic influenza). Except in extraordinary cases, providers are expected to manage surge while adhering to their existing standards for quality and patient safety. Currently, health care organizations are expected to prepare for and respond to surges in demand ranging from a severe catastrophe (for example, a nuclear detonation) to more common, less severe events (for example, a worse-than-usual influenza season). The Centers for Disease Control and Prevention (CDC) and Federal agencies have dedicated considerable funding and technical assistance towards developing and coordinating community-level responses to surges in demand, but it remains a difficult task.

While there is extensive research on managing collaborations during times of extraordinary pressure where response to surge takes precedence over other activities, less is known about developing and maintaining integrated collaborations during periods where the system must respond to unusual surge but also continue the routine provision of health care. In particular, studies have not explored how these collaborations can build on sustainable relationships between a broad range of stakeholders (including primary care providers) in communities with different market structures and different degrees of investment in public health.

This study aims to generate information about the role of community-based collaborations in disaster preparedness that the CDC can use to develop its programs guiding and supporting these collaborations. This project will explore barriers and facilitators to coordination on surge response in ten communities, eight of which have been studied longitudinally since the mid-1990s as part of the Center for Studying Health System Change's (HSC's) Community Tracking Study (CTS). Interviews of local healthcare stakeholders will be conducted at 10 sites.

Interviews will be conducted at a total of 63 organizations over the two years of this project. Within each of the ten communities studied, two emergency practitioner respondents (one from a safety-net hospital and one from a non-safety-net hospital), two primary care providers (one from a large practice and one from a small practice) and two local preparedness experts (one from the County or local public health agency, and one coordinator or collaboration leader) will be interviewed. In three sites (Phoenix, Greenville and Seattle) an additional respondent will be identified from an outlying rural area to offer the perspective of providers in those communities. There is no cost to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent category	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Emergency Department: Private, non-safety net	10	1	1	10
Emergency Department: Public/safety net	10	1	1	10
Primary Care: Larger practice	10	1	1	10
Primary Care: Solo/2 physician practice	10	1	1	10
Preparedness: Public/Department of Health	10	1	1	10
Preparedness: Health care preparedness coordinator/collaboration leader	10	1	1	10
Rural (Greenville, Phoenix, Seattle only: Clinician-leader at rural site (ED or PC)	3	1	1	3

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondent category	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Total				63

Dated: December 27, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–33128 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2321–N]

RIN 0938–AQ44

Medicaid Program; Final FY 2009 and Preliminary FY 2011 Disproportionate Share Hospital Allotments, and Final FY 2009 and Preliminary FY 2011 Institutions for Mental Diseases Disproportionate Share Hospital Limits

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal FY (FY) 2009 and the preliminary Federal share DSH allotments for FY 2011. This notice also announces the final FY 2009 and the preliminary FY 2011 limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities. In addition, this notice includes background information describing the methodology for determining the amounts of States' FY DSH allotments.

DATES: *Effective Date:* This notice is effective March 4, 2011. The final allotments and limitations set forth in this notice are effective for the fiscal years specified.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. Disproportionate Share Hospital Allotments for Federal FY 2003

Under section 1923(f)(3) of the Social Security Act (the Act), States' Federal fiscal year (FY) 2003 disproportionate share hospital (DSH) allotments were calculated by increasing the amounts of the FY 2002 allotments for each State (as specified in the chart, entitled "DSH Allotment (in millions of dollars)", contained in section 1923(f)(2) of the Act) by the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the prior fiscal year. The allotment, determined in this way, is subject to the limitation that an increase to a State's DSH allotment for a FY cannot result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous FY or 12 percent of the State's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Most States' *actual* FY 2002 allotments were determined in accordance with the provisions of section 1923(f)(4) of the Act which allowed for a special DSH calculation rule for FY 2001 and FY 2002. However, as indicated previously, the calculation of States' FY 2003 allotments was *not* based on the actual FY 2002 DSH allotments; rather, section 1923(f)(3) of the Act requires that the States' FY 2003 allotments be determined using the amount of the States' FY 2002 allotments specified in the chart in section 1923(f)(2) of the Act. The exception to this is the calculation of the FY 2003 DSH allotments for certain "Low-DSH States" (defined in section 1923(f)(5) of the Act). Under the Low-DSH State provision, there is a special calculation methodology for the Low-DSH States only. Under this methodology, the FY 2003 allotments were determined by increasing States' actual FY 2002 DSH allotments, rather than their FY 2002 allotments specified in the chart in section 1923(f)(2) of the Act, by the percentage change in the CPI–U for the previous fiscal year.

B. DSH Allotments for FY 2004

Section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) amended section 1923(f)(3) of the Act to provide for a "Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis." Under this provision, States' FY 2004 DSH allotments were determined by increasing their FY 2003 allotments by 16 percent, and the FY DSH allotment amounts so determined were not subject to the 12 percent limit.

C. DSH Allotments for Non-Low DSH States for FY 2005, and FYs Thereafter

Under the methodology contained in section 1923(f)(3)(C) of the Act, as amended by section 1001(a)(2) of the MMA, the non-Low-DSH States' DSH allotments for FY 2005 and subsequent FYs continue at the same level as the States' DSH allotments for FY 2004 until a "fiscal year specified" occurs. The fiscal year specified is the first FY for which the Secretary estimates that a State's DSH allotment equals (or no longer exceeds) the DSH allotment as would have been determined under the statute in effect before the enactment of the MMA. We determine whether the fiscal year specified has occurred under a special parallel process. Specifically, under this parallel process, a "parallel" DSH allotment is determined for FYs after 2003 by increasing the State's DSH allotment for the previous FY by the percentage change in the CPI–U for the prior FY, subject to the 12 percent limit. This is the methodology as would otherwise have been applied under section 1923(f)(3)(A) of the Act, notwithstanding the application of the provisions of MMA. The fiscal year specified, is the FY in which the parallel DSH allotment calculated under this special parallel process equals or exceeds the FY 2004 DSH allotment, as determined under the MMA provisions. Once the fiscal year specified occurs for a State, that State's FY DSH allotment will be calculated by increasing the State's previous actual FY DSH allotment (which would be equal to the FY 2004 DSH allotment) by the percentage change in the CPI–U for the previous FY, subject to the 12 percent limit. The following example illustrates how the FY DSH allotment would be calculated for FYs after FY 2004.

Example—In this example, we are determining the parallel FY 2009 DSH allotment. A State's actual FY 2003 DSH allotment is $100 million. Under the MMA, this State's actual FY 2004 DSH allotment would be $116 million ($100 million increased by 16 percent). The State's DSH allotment for FY 2005 and subsequent FYs would continue at the $116 million FY 2004 DSH allotment for FYs following FY 2004 until the fiscal year specified occurs. Under the separate parallel process, we determine

whether the fiscal year specified has occurred by calculating the State's DSH allotments in accordance with the statute in effect before the enactment of the MMA. Under this special process, we continue to determine the State's parallel DSH allotment for each FY by increasing the State's parallel DSH allotment for the previous FY (as also determined under the special parallel process) by the percentage change in the CPI–U for the previous FY, and subject to the 12 percent limit. Assume for purposes of this example that, in accordance with this special parallel process, the State's parallel FY 2008 DSH allotment was determined to be $115 million and the percentage change in the CPI–U for FY 2008 (the previous FY) relevant for the calculation of the FY 2009 DSH allotment was 4.4 percent. That is, the percentage change for the CPI–U for FY 2008, the year before FY 2009, was 4.4 percent. Therefore, the State's special parallel process FY 2009 DSH allotment amount would be calculated by increasing the special parallel process FY 2008 DSH allotment amount of $115 million by 4.4 percent; this results in a parallel process DSH allotment process amount for FY 2009 of $120.06 million. Since $120.06 million is greater than $116 million (the actual FY 2004 DSH allotment calculated under the MMA), we would determine that FY 2009 is the fiscal year specified (the first year that the FY 2004 allotment equals or no longer exceeds the parallel process allotment). Since FY 2009 is the fiscal year specified, we would then determine the State's FY 2009 allotment by increasing the State's *actual* FY 2008 DSH allotment ($116 million) by the percentage change in the CPI–U for FY 2008 (4.4 percent). Therefore, the State's FY 2009 DSH allotment would be $121.104 million ($116 million increased by 4.4 percent); for purposes of the calculation in this example, the application of the 12 percent limit has no effect. Furthermore, for FY 2009 and thereafter, the State's DSH allotment would be calculated under the provisions of section 1923(f)(3)(A) of the Act by increasing the State's previous FY's DSH allotment by the percentage change in the CPI–U for the previous FY, subject to the 12 percent limit.

However, as amended by section 1001(b)(4) of the MMA, section 1923(f)(5)(B) of the Act also contains criteria for determining whether a State is a Low-DSH State, beginning with FY 2004. This provision is described in section I.D.

D. DSH Allotments for Low-DSH States for FY 2004 and FYs Thereafter

Section 1001(b)(1) of the MMA amended section 1923(f)(5) of the Act regarding the calculation of the FY DSH allotments for "Low-DSH" States for FY 2004 and subsequent fiscal years. Specifically, under section 1923(f)(5)(B) of the Act, as amended by section 1001(b)(4) of the MMA, a State is considered a Low-DSH State for FY 2004 if its total DSH payments under its State plan for FY 2000 (including Federal and State shares) as reported to CMS as of August 31, 2003, are greater than 0 percent and less than 3 percent of the State's total FY 2000 expenditures under its State plan for medical assistance. For States that meet the Low-DSH criteria, their FY 2004 DSH allotments are calculated by increasing their FY 2003 DSH allotments by 16 percent. Therefore, for FY 2004, Low-DSH States' FY DSH allotments are calculated in the same way as the DSH allotments for regular States, which under section 1923(f)(3) of the Act, get the special temporary increase for FY 2004.

Furthermore, for States meeting the MMA's Low-DSH definition, the DSH allotments for FYs 2005 through 2008 will continue to be determined by increasing the previous FY's DSH allotment by 16 percent. The Low-DSH States' DSH allotments for FYs 2004 through 2008 are not subject to the 12 percent limit. The Low-DSH States' DSH allotments for FYs 2009 and subsequent FYs are calculated by increasing those States' DSH allotments for the prior FY by the percentage change in the CPI–U for that prior fiscal year. For FYs 2009 and thereafter, the DSH allotments so determined would be subject to the 12 percent limit.

E. Institutions for Mental Diseases DSH Limits for FYs 1998 and Thereafter

Under section 1923(h) of the Act, Federal financial participation (FFP) is not available for DSH payments to institutions for mental diseases (IMDs) and other mental health facilities that are in excess of State-specific aggregate limits. Under this provision, this aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a State's FY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FY 1995 DSH allotment (as reported on the Form CMS–64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

Each State's IMD limit on DSH payments to IMDs and other mental health facilities was calculated by first determining the State's total computable DSH expenditures attributable to the FY 1995 DSH allotment for mental health facilities and inpatient hospitals. This calculation was based on the total computable DSH expenditures reported by the State on the Form CMS–64 as mental health DSH and inpatient hospital DSH as of January 1, 1997. We then calculate an "applicable percentage." The applicable percentage for FY 1998 through FY 2000 (1995 IMD DSH percentage) is calculated by dividing the total computable amount of IMD and mental health DSH expenditures applicable to the State's FY 1995 DSH allotment by the total computable amount of all DSH expenditures (mental health facility plus inpatient hospital) applicable to the FY 1995 DSH allotment. For FY 2001 and thereafter, the applicable percentage is defined as the lesser of the applicable percentage as calculated above (for FYs 1998 through 2001) or 50 percent for FY 2001; 40 percent for FY 2002; and 33 percent for each subsequent fiscal year.

The applicable percentage is then applied to each State's total computable FY DSH allotment for the current fiscal year. The State's total computable FY DSH allotment is calculated by dividing the State's Federal share DSH allotment for the FY by the State's Federal medical assistance percentage (FMAP) for that fiscal year.

In the final step of the calculation of the IMD DSH Limit, the State's total computable IMD DSH limit for the FY is set at the lesser of the product of a State's current FY total computable DSH allotment and the applicable percentage for that FY, or the State's FY 1995 total computable IMD and other mental health facility DSH expenditures applicable to the State's FY 1995 DSH allotment as reported on the Form CMS–64.

The MMA legislation did not amend the Medicaid statute with respect to the calculation of the IMD DSH limit.

*F. Publication in the **Federal Register** of Preliminary and Final Notice for DSH Allotments and IMD DSH Limits*

In general, we initially determine States' DSH allotments and IMD DSH limits for a FY using estimates of medical assistance expenditures, including DSH expenditures in their Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS–37) before the FY for which the DSH allotments and IMD DSH limits are being determined. Also, as part of the basic determination of preliminary DSH allotments for a FY, we use the available CPI–U percentage increase that is available before the beginning of the FY for which the allotment is being determined to determine the preliminary FY DSH allotment. For example, in determining the preliminary FY 2011 DSH allotment, we would apply the CPI–U percentage increase for FY 2010 that was available just before the beginning of FY 2011 on October 1, 2010.

The DSH allotments and IMD DSH limits determined using these estimates and CPI–U percentage increases

available before the beginning of the FY are referred to as "*preliminary*." Only after we receive States' reports of the actual related medical assistance expenditures through the quarterly expenditure report (Form CMS–64), and the final historic CPI–U percentage increases for the prior FY, which occurs after the end of the FY, are the "*final*" DSH Allotments and IMD DSH limits determined.

The notice published in the **Federal Register** on December 19, 2008 (73 FR 77704), included the announcement of the preliminary FY 2009 DSH allotments (based on estimates), and the preliminary FY 2009 IMD DSH limits (since they were based on the preliminary DSH allotments for FY 2009). A correction notice published in the **Federal Register** on January 26, 2009 (74 FR 4439) provided a correction to the chart of preliminary FY 2009 DSH allotments published in the December 19, 2008 **Federal Register**. Finally, the notice published in the **Federal Register** on April 23, 2010 (75 FR 21314), included the announcement of the revised preliminary FY 2009 DSH allotments to reflect increases in the amount of the States' DSH allotments for FY 2009 and FY 2010 pursuant to the enactment on February 17, 2009 of the American Recovery and Reinvestment Act of 2009 (section 5002 of Pub. L. 111–5) and revisions to the CPI–U percentage increase for FY 2008, and the revised preliminary FY 2009 IMD DSH limits (since they were based on the revised preliminary DSH allotments for FY 2009).

This notice announces the *final* FY 2009 DSH allotments and the *final* FY 2009 IMD DSH limits (since these are now based on the actual expenditures for that fiscal year), the *preliminary* FY 2011 DSH allotments (based on expenditure estimates), and the *preliminary* IMD DSH limits for FY 2011 (since they are based on the preliminary DSH allotments for FY 2011). This notice does not include the *final* FY 2010 DSH allotments or the *final* FY 2010 IMD DSH limits, since the associated actual expenditures for FY 2010 are not available at this time.

G. DSH Allotment Provisions for Certain States

1. DSH Allotments for the State of Tennessee

Section 1923(f)(6)(A) of the Act, as amended by section 404 of Public Law 109–432 (enacted on December 20, 2006), section 204 of Public Law 110–173 (enacted on December 29, 2007), section 202 of Public Law 110–275 (enacted on July 15, 2008), section 616 of Public Law 111–3 (enacted on February 4, 2009), and most recently as amended by Section 1054 of Public Law 111–152 (enacted on March 30, 2010) provides for the determination of a DSH allotment for the State of Tennessee for each of FYs 2007 through FY 2011, for 2 periods encompassing FY 2012, and for FY 2013. In accordance with this provision, Tennessee's DSH allotment for each of FYs 2007 through 2011 is the greater of $280 million and the FY 2007 Federal medical assistance percentage of the DSH payment adjustments reflected in the State's TennCare Demonstration Project for the demonstration year ending in 2006. In accordance with this provision, the State's Federal share DSH allotment for each of FYs 2007 through 2011 is $305,451,928. Furthermore, Tennessee's DSH allotment for the period October 1, 2011 through December 31, 2011 (the first quarter of FY 2012) is one-fourth of this amount; that is, $76,362,982. Section 1923(f)(6)(A)(ii) of the Act further limits the amount of Federal funds that are available for DSH payments that Tennessee may make in each of the FYs 2007 through 2011, and for the first quarter of FY 2012 to 30 percent of the DSH allotment. In this regard, the limit on the DSH payments that the State of Tennessee may make is effectively $91,635,578 (30 percent of $305,451,928) for each FY 2007 through FY 2011, and $22,908,895 (30 percent of $76,362,982) for the period October 1, 2011 through December 31, 2011 (the first quarter of FY 2012. The statute also provides for additional allotments for Tennessee for the period January 1, 2011 through September 30, 2012 (quarters 2 through 4 of FY 2012) and for all of FY 2013; future **Federal Register** notices will describe the determination of the amounts of DSH allotments for Tennessee for FY 2012 and FY 2013.

2. DSH Allotments for the State of Hawaii

Section 1923(f)(6)(B) of the Act, as amended by section 404 of Public Law 109–432, section 204 of Public Law 110–173, section 202 of Public Law 110–275, section 616 of Public Law 111–3 (enacted on February 4, 2009) most recently as amended by Section 10201(e)(1) of Public Law 111–148 (enacted on March 23, 2010) provides for a DSH allotment for the State of Hawaii for each of FYs 2007 through 2011, for 2 periods encompassing FY 2012, and certain other provisions providing for a DSH allotment for FY 2013. In accordance with the statute, Hawaii's DSH allotment each year for FY 2007 through FY 2011 is $10 million. Furthermore, for the period October 1, 2011 through December 31, 2011 (the first quarter of FY 2012) Hawaii's DSH allotment is $2.5 million, and for the period January 1, 2012 through September 30, 2012 Hawaii's DSH allotment is $7.5 million. Future **Federal Register** notices will describe the determination of the amounts of DSH allotments for Hawaii for FY 2012 and FY 2013.

H. DSH Allotments for FY 2009 and FY 2010 Under the Recovery Act

Section 5002 of the Recovery Act added a new section 1923(f)(3)(E) of the Act; this new section provides for a temporary increase in States' DSH allotments only for FY 2009 and FY 2010.

1. Revised Preliminary DSH Allotments for FY 2009

States' preliminary FY 2009 DSH allotments were previously published in the **Federal Register** on January 26, 2009. However, section 5002 of the Recovery Act enacted after the publication of the preliminary FY 2009 DSH allotments provided for an increase in States' DSH allotments from what were previously determined and published in the **Federal Register** on January 26, 2009. The Recovery Act provided fiscal relief to States during the recent national economic downturn. In that regard, section 1923(f)(3)(E)(i)(I) of the Act, as created by section 5002 of the Recovery Act, requires that, in general, States' DSH allotments for FY 2009 be equal to 102.5 percent of the FY 2009 allotments that would otherwise have been determined; this provision does not apply to certain States as discussed in section G. above.

As described in section F. above, we typically publish States' preliminary DSH allotments based on expenditure estimates and CPI–U percentage increases available before the FY for which the preliminary DSH allotment is being determined. The preliminary DSH allotments are subsequently finalized after the FY is over and when the applicable inputs for determining the DSH allotments (that is, the applicable expenditures and the CPI–U percentage increase for the previous FY) are final.

Due to the Recovery Act temporary increase for FY 2009, in this notice we revised the *preliminary* FY 2009 DSH allotments previously published to reflect updated States' expenditures, and more significantly, to reflect an updated and increased CPI–U percentage increase. As described above, States' DSH allotments are determined by increasing the previous FY allotment by the applicable CPI–U

percentage increase. In particular, when we previously calculated the preliminary FY 2009 allotments, the applicable CPI–U percentage increase for FY 20*08* (used for determining the FY 20*09* DSH allotment), which was available before the beginning of FY 2009, was *4.0* percent. However, subsequent to our initial determination of the preliminary FY 2009 DSH allotments, the historical applicable CPI–U percentage increase for FY 2008 became available; that actual CPI–U increase for FY 2008 is *4.4* percent. In order to ensure that the full increase in DSH allotments for FY 2009 is available to States during FY 2009, we revised the preliminary FY 2009 DSH allotments prior to the end of FY 2009 to reflect both the updated increase in the applicable CPI–U percentage increase for FY 2008 and the 2.5 percent increase in States' FY 2009 DSH allotments as required under the Recovery Act.

The final FY 2009 allotments contained in this **Federal Register** notice reflect the final CPI–U percentage increase for FY 2008 and the actual expenditures in Medicaid for FY 2009.

2. Preliminary DSH Allotments for FY 2011

Sections 1923(f)(3)(E) of the Act, as amended by Section 5002 of the Recovery Act, in general (with the exceptions for certain States described above) provided for a 2.5 percent increase in States' FY 2009 DSH allotments and for States' FY 2010 DSH allotments to be determined as the higher of:

- 102.5 percent of the DSH allotment for FY 2009, as determined under the Recovery Act provision, or
- The FY 2010 DSH allotment as would otherwise be calculated without the application of the Recovery Act provision.

The final FY 2009 DSH allotments contained in this **Federal Register** notice and the preliminary FY 2010 DSH allotment for States (as published in the **Federal Register** on April 23, 2010, 75 FR 21314) were determined in accordance with the law, as amended by the Recovery Act.

As indicated, the Recovery Act DSH allotment provisions apply only for FY 2009 and FY 2010; that is, States' DSH allotments for FY 2011 are determined as DSH allotments were determined prior to the enactment of the Recovery Act.

3. Effect of the Recovery Act DSH Provision on Calculation of the States' IMD DSH Limits for FY 2009 and FY 2010, and Determination of Such Limits for FY 2011

Section E above described the determination of States' IMD DSH limits for FYs beginning FY 1998 and after, as determined under section 1923(h) of the Act. Section 5002 of the Recovery Act did not amend section 1923(h) of the Act. Accordingly, States' preliminary IMD DSH limits for FY 2009 and FY 2010, the FYs for which the Recovery Act provisions are applicable, were determined as under the existing provisions. As described in section E above, States' DSH allotments are an element of the determination of the IMD DSH limit. Therefore, the DSH allotments for FY 2009 and FY 2010, as determined under the Recovery Act provisions, were used in calculating States' Final FY 2009 (as contained in this **Federal Register** notice) and States' preliminary FY 2010 (as previously published in the **Federal Register** on April 23, 2010, 75 FR 21314) IMD DSH limits. This is the same application of States' DSH allotments for purposes of determining States' IMD DSH limits as was applied under section 1923(h) of the Act, regardless of the Recovery Act provision.

II. Provisions of the Notice

A. Calculation of the Final FY 2009 Federal Share State DSH Allotments, and the Preliminary FY 2011 Federal Share State DSH Allotments

1. Final FY 2009 Federal Share State DSH Allotments

Chart 1 of the Addendum to this notice provides the States' final FY 2009 DSH allotments as discussed above in section I.H.1 of this notice. As discussed in that section of this notice, the revised preliminary FY 2009 DSH allotments were previously published in the **Federal Register** on April 23, 2010. As described above and in previous **Federal Register** notices in determining non-Low DSH States' DSH allotments for FYs after FY 2004 under section 1923(f)(3)(C) of the Act for DSH allotments, we determined States' DSH allotments under a "parallel" process. Under the parallel process, for each FY for each State, we have been determining whether the fiscal year specified (as defined in section 1923(f)(3)(D) of the Act) has occurred. Under section 1923(f)(3)(D) of the Act, the fiscal year specified is determined separately for each State and "is the first FY for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before the date of enactment" of MMA. The process in effect before the enactment in MMA is the process described in section 1923(f)(3)(A) of the Act; under this process each States' DSH allotment since FY 2003 is increased by the CPI–U increase for the prior FY and the result is then compared to the State's FY 2004 DSH allotment, as determined under section 1923(f)(3)(C)(i) of the Act (under which the States' FY 2003 DSH allotments were increased by 16 percent). The fiscal year specified for a State is the FY when the FY 2004 allotment is no longer greater than the parallel process DSH allotment.

We are reiterating the parallel process provision because we determined that FY 2009 was the fiscal year specified for all non-Low DSH States (except Louisiana). Therefore, as indicated in section 1923(f)(3)(C)(ii) of the Act, the Final FY 2009 DSH allotment for all non-Low DSH States (except Louisiana) is equal to the prior FY 2008 DSH allotment increased by the CPI–U increase for FY 2008 (4.4 percent). Chart 1 contains the final FY 2009 DSH allotments. For the non-Low DSH States for which the FY 2009 is the fiscal year specified, the FY 2010 and subsequent FY DSH allotments are calculated by increasing the prior FY DSH allotment by the CPI–U increase for the prior fiscal year.

For Low-DSH States, the FY 2009 DSH allotment is calculated using the same methodology as for the non-Low DSH States for which the fiscal year specified has occurred. That is, for FY 2009 and following FYs, the DSH allotment for Low-DSH States is calculated by increasing the prior FY DSH allotment by the percentage change in the CPI–U for the prior fiscal year.

The preliminary FY 2009 allotments were initially determined using the States' August 2008 expenditure estimates submitted by the States on the Form CMS–37, and the percentage increase in the CPI–U for the previous FY that was available before the beginning of FY 2009. As discussed in section I.H.1 above, based on the updated CPI–U percentage increase for FY 2008 (from 4.0 percent to 4.4 percent), and the enactment of section 5002 of the Recovery Act (which provides that States' FY 2009 DSH allotments are equal to 102.5 percent of these allotments as would otherwise be determined for the FY), we revised the preliminary FY 2009 DSH allotments, which were published in the **Federal Register** on April 23, 2010. States' final FY 2009 DSH allotments as contained in

this **Federal Register** were determined based on States' four quarterly Medicaid expenditure reports (Form CMS–64) for FY 2009 received following the end of FY 2009 and the final applicable percentage increase to CPI–U for the previous FY 2008.

2. Calculation of the Preliminary FY 2011 Federal Share State DSH Allotments

Chart 2 of the Addendum to this notice provides the preliminary FY 2011 DSH allotments determined in accordance with the section 1923(f)(3) of the Act, as described in section I.H.2. As described in that section of this notice, the Recovery Act provisions which increased States' DSH allotments for FY 2009 and FY 2010 are not applicable for determining States' FY 2011 DSH allotments. States' final FY 2011 DSH allotments will be published in the **Federal Register** following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS–64) for FY 2010 following the end of FY 2011.

B. Calculation of the Final FY 2009 and Preliminary FY 2011 IMD DSH Limits

As discussed in section I.E. and I.H.3 above of this notice, section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for IMD or DSH payments that exceed the IMD limits. In this notice, we are publishing the final FY 2009 IMD DSH Limit and the preliminary FY 2011 IMD DSH Limit determined in accordance with the provisions discussed above, and for FY 2009, reflecting the DSH allotments for the FY determined under the provisions of section 1923(f)(3)(E) of the Act, as amended by section 5002 of the Recovery Act.

Charts 3 and 4 of the Addendum to this notice detail each State's final IMD DSH Limit for FY 2009 and the preliminary IMD DSH Limit for FY 2011, respectively, determined in accordance with section 1923(h) of the Act.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice does reach the $100 million economic threshold and thus is considered a major rule under the Congressional Review Act.

There are no changes between the revised preliminary and final FY 2009 DSH allotments and FY 2009 IMD DSH limits.

The preliminary FY 2011 DSH allotments being published in this notice are about $365 million less than the preliminary FY 2010 DSH allotments published in the **Federal Register** on April 23, 2010 (75 FR 21314). These decreases are a direct result of the application of the provisions of section 1923(f)(3) of the Act in the calculation of States' DSH allotments, and in particular the provisions of section 1923(f)(3)(E) of the Act as amended by the Recovery Act (which provided for a temporary increase in States' DSH allotments for FY 2009 and FY 2010 during the specified recession period) do not apply with respect to the FY 2011 and following FY DSH allotments.

The preliminary FY 2011 IMD DSH Limits being published in this notice are about $23 million less than the preliminary FY 2010 IMD DSH Limits published in **Federal Register** on April 23, 2010 (75 FR 21314). This is because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY, and since the preliminary FY 2011 DSH allotments were decreased as compared to the preliminary FY 2010 DSH allotments, the associated FY 2011 IMD DSH limits for some States were also decreased.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have significant economic impact on a substantial number of small entities. Specifically, the effects of the various controlling statutes on providers are not impacted by a result of any independent regulatory impact and not this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Medicaid statute (including as most recently amended by the Recovery Act) specifies the methodology for determining the amounts of States' DSH allotments and IMD DSH limits; and as described previously, results in increases in States' DSH allotments and IMD DSH limits for the FYs referred to. The statute applicable to these allotments and limits does not apply to the determination of the amounts of DSH payments made to specific DSH hospitals; rather, these allotments and limits represent an overall limit on the total of such DSH payments. In this regard, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending

in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This notice will have no consequential effect on State, local, or Tribal governments, in the aggregate, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

Alternatives Considered

The methodologies for determining the States' fiscal year DSH allotments and IMD DSH Limits, as reflected in this notice, were established in accordance with the methodologies and formula for determining States' allotments as specified in statute. This notice does not put forward any further discretionary administrative policies for determining such allotments.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the estimated expenditures associated with the provisions of this notice. This table provides our best estimate of the change (decrease) in the Federal share of States' Medicaid DSH payments resulting from the application of the provisions of the Medicaid statute relating to the calculation of States' FY DSH allotments and the increase in the FY DSH allotments from FY 2010 to FY 2011.

TABLE—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2010 TO FY 2011

[In millions]

Category	Transfers
Annualized Monetized Transfers.	−$365.
From Whom To Whom?.	Federal Government to States.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Addendum

This addendum contains the charts 1 through 4 (preceded by associated keys) that are referred to in the preamble of this notice.

Key to Chart 1. Final DSH Allotments for FY 2009.

KEY TO CHART 1—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2009

[The Final FY 2009 DSH Allotments for the NON-Low DSH States are presented in the top section of this chart, and the Final FY 2009 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart.]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 2.
Columns C–L	For all States, the entries in Columns C through K present the determination of the final FY 2009 DSH allotments as would be calculated *without* the application of section 1923(f)(3)(E) of the Act as amended by section 5002 of ARRA. For all States, the entries in Column M present the calculation of the final FY 2009 DSH Allotments, determined in accordance with the provisions of section 5002 of ARRA. For Non-Low DSH States indicated in the top portion of Chart 2, entries in Columns C through K are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these Columns indicate "NA", and for States for which such test is not applicable, these Columns indicate "na". For Low DSH States, entries are in the bottom portion of Chart 2.
Column C	FY 2009 FMAPS. This column contains the States' FY 2009 Federal Medical Assistance Percentages.
Column D	FY 2008 DSH Allotment For States Meeting Test. This column contains the States' prior FY 2008 DSH Allotments.
Column E	FY 2008 Allotments X (1 + Percentage Increase in CPI–U): 1.044. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (4.4 percent).
Column F	FY 2009 TC MAP Exp. Incl. DSH. This column contains the amount of the States' actual FY 2009 total computable medical assistance expenditures including DSH expenditures.
Column G	FY 2009 TC MAP Exp. Net of DSH. This column contains the amount of the States' actual FY 2009 total computable DSH expenditures.
Column H	FY 2009 TC MAP Exp. Net of DSH. This column contains the amount of the States' actual FY 2009 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G.
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2008 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2008) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I.
Column K	FY 2009 DSH Allotment PRE–ARRA. This column contains the States' FY 2009 DSH allotments as would be determined prior to ARRA, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section 1923(f)(6) of the Act.
Column L	FY 2009 DSH Allotment Under ARRA. This column contains the State's FY 2009 DSH allotment as determined in accordance with section 5002 of ARRA, and calculated as the amount in Column K multiplied by 1.025.
Column M	Final FY 2009 DSH Allotment Under ARRA. (Max of Col K or L.) This column contains the State's final FY 2009 DSH allotment as determined in accordance with section 1923(f)(3)(E) of the Act as amended by section 5002 of ARRA, and determined as the maximum of the amount in Column K or L.

Key to Chart 2. Preliminary DSH Allotments for FY 2011.

KEY TO CHART 2—PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2011

[The Preliminary FY 2011 DSH Allotments for the NON-Low DSH States are presented in the top section of this chart, and the Preliminary FY 2011 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart.]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 3.
Columns C–K	For all States, the entries in Columns B through K present the determination of the preliminary FY 2011 DSH allotments as would be calculated *without* the application of section 5002 of ARRA since such provisions were only applicable for FY 2009 and FY 2010. For Non-Low DSH States indicated in the top portion of Chart 2, entries in Columns C through J are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these Columns indicate "NA", and for States for which such test is not applicable, these Columns indicate "na". For Low DSH States, entries are in the bottom portion of Chart 2.
Column C	FY 2011 FMAPS. This column contains the States' FY 2011 Federal Medical Assistance Percentages.
Column D	FY 2010 DSH Allotment For States Meeting Test. This column contains the States' prior FY 2010 DSH Allotments as would be determined without the application of section 5002 of ARRA.
Column E	FY 2010 Allotments X (1 + Percentage Increase in CPI–U): 1.018. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (1.8 percent).
Column F	FY 2011 TC MAP Exp. Incl. DSH. This column contains the amount of the States' projected FY 2011 total computable medical assistance expenditures including DSH expenditures.
Column G	FY 2011 TC DSH Expenditures. This column contains the amount of the States' projected FY 2011 total computable DSH expenditures.
Column H	FY 2011 TC MAP Exp. Net of DSH. This column contains the amount of the States' projected FY 2011 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G.
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2010 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2010) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I.
Column K	FY 2011 DSH Allotment. This column contains the States' FY 2011 DSH allotments as would be determined without the application of the provisions of section 5002 of ARRA, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section 1923(f)(6) of the Act.

Key to Chart 3. Final IMD DSH Limit for FY 2009.

KEY TO CHART 3—FINAL IMD DSH LIMIT FOR FY: 2009

[Key to the Chart of the Final FY 2009 IMD Limitations.—The Final FY 2009 IMD DSH Limits for the regular States are presented in the top section of this chart and the final FY IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col C/D. This column contains the "applicable percentage" representing the total computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D). Per section 1923(h)(2)(A)(ii)(III) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2009 Allotment in FS Under ARRA. This column contains the States' final FY 2009 DSH allotments as determined under ARRA.
Column G	FY 2009 FMAP. This column contains the States' FY 2009 FMAPs.
Column H	FY 2009 DSH Allotments in TC. Col. F/G. This column contains the FY 2009 total computable DSH Allotment (determined as the amount in Column F divided by the amount in Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2008 total computable DSH allotment (calculated as the amount in Column E multiplied by the amount in Column H).

KEY TO CHART 3—FINAL IMD DSH LIMIT FOR FY: 2009—Continued

[Key to the Chart of the Final FY 2009 IMD Limitations.—The Final FY 2009 IMD DSH Limits for the regular States are presented in the top section of this chart and the final FY IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column J	FY 2009 TC IMD DSH Limit. Lesser of Col. C or I. This column contains the FY 2009 TC IMD DSH Limit equal to the lesser of the amount in Column C or Column I.
Column K	FY 2009 IMD DSH Limit in FS U/ARRA. Col. G × J. This column contains the FY 2009 Federal share IMD DSH limit determined by converting the total computable FY 2009 IMD DSH Limit from Column J into a Federal share amount by multiplying it by the FY 2009 FMAP in Column G.

Key to Chart 4. Preliminary IMD DSH Limit for FY 2011.

KEY TO CHART 4—PRELIMINARY IMD DSH LIMIT FOR FY: 2011

[Key to the Chart of the FY 2011 IMD Limitations—The preliminary FY 2011 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this chart and the preliminary FY 2011 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percent Col. C/D. This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) Of the Act, for FYs after FY 2002, the applicable Percentage can be no greater than 33 percent.
Column F	FY 2011 Federal Share DSH Allotment. This column contains the States' preliminary FY 2011 DSH allotments.
Column G	FY 2011 FMAP. This column contains the States' FY 2010 FMAPs.
Column H	FY 2011 DSH Allotments in Total Computable Col. F/G. This column contains States' FY 2011 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2010 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	FY 2011 TC IMD DSH Limit. Lesser of Col. C or I. This column contains the FY 2011 TC IMD DSH Limit equal to the lesser of the amount in Column C or Column I.
Column K	FY 2011 IMD DSH Limit in Federal Share, Col. G x J. This column contains the FY 2011 Federal share IMD DSH limit determined by converting the total computable FY 2011 IMD DSH Limit from Column J into a Federal share amount by multiplying it by the FY 2011 FMAP in Column G.

BILLING CODE 4120–01–P

CHART 1. FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2009

A	B	C	D	E	F	G	H	I	J	K	L	M
STATE	1923(f)(3)(D) Test Met /1	FY 2009 FMAPS	FY 2008 DSH Allotment For States Meeting Test /2	FY 2008 Allotments x CPIU Increase: 1.044	FY 2009 TC MAP Exp. Incl. DSH	FY 2009 TC DSH Expenditures	FY 2009 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2008 Allotment or 12% Limit (MAX of D or I)	FY 2009 DSH Allotment PRE-ARRA =FY 04 ALLOT or MIN Col J, Col E	FY 2009 DSH ALLOTMENT UNDER ARRA Col L x 1.025	FINAL FY 2009 DSH ALLOTMENT (= Max of Col K or L
ALABAMA	YES	67.98%	$289,640,400	$302,384,578	$4,388,967,084	$455,934,378	$3,933,032,706	$573,135,184	$573,135,184	$302,384,578	$309,944,192	$309,944,192
ARIZONA	YES	65.77%	$95,369,400	$99,565,654	$8,664,547,751	$161,600,318	$8,502,947,433	$1,248,068,855	$1,248,068,855	$99,565,654	$102,054,795	$102,054,795
CALIFORNIA	YES	50.00%	$1,032,579,800	$1,078,013,311	$40,847,829,842	$2,265,555,071	$38,582,274,771	$6,091,938,122	$6,091,938,122	$1,078,013,311	$1,104,963,644	$1,104,963,644
COLORADO	YES	50.00%	$87,127,600	$90,961,214	$3,533,332,167	$188,429,262	$3,344,902,905	$528,142,564	$528,142,564	$90,961,214	$93,235,244	$93,235,244
CONNECTICUT	YES	50.00%	$188,384,000	$196,672,896	$5,667,612,721	$323,041,601	$5,344,571,120	$843,879,651	$843,879,651	$196,672,896	$201,589,718	$201,589,718
DISTRICT OF COLUMBIA	YES	70.00%	$57,692,600	$60,231,074	$1,611,030,427	$71,226,281	$1,539,804,146	$223,006,118	$223,006,118	$60,231,074	$61,736,851	$61,736,851
FLORIDA	YES	55.40%	$188,384,000	$196,672,896	$14,990,559,595	$347,334,200	$14,643,225,395	$2,243,045,217	$2,243,045,217	$196,672,896	$201,589,718	$201,589,718
GEORGIA	YES	64.49%	$253,141,000	$264,279,204	$7,499,091,546	$411,355,202	$7,087,736,344	$1,044,971,881	$1,044,971,881	$264,279,204	$270,886,184	$270,886,184
HAWAII* /3	na	na	na	na	na	na	na	na	na	$10,000,000	$10,000,000	$10,000,000
ILLINOIS	YES	50.32%	$202,512,800	$211,423,363	$13,011,894,799	$488,259,449	$12,523,635,350	$1,973,453,019	$1,973,453,019	$211,423,363	$216,708,947	$216,708,947
INDIANA	YES	64.26%	$201,335,400	$210,194,158	$5,864,429,697	$143,393,558	$5,721,036,139	$844,164,827	$844,164,827	$210,194,158	$215,449,012	$215,449,012
KANSAS	YES	60.08%	$38,854,200	$40,563,785	$2,422,912,043	$68,939,043	$2,353,973,000	$352,978,447	$352,978,447	$40,563,785	$41,577,880	$41,577,880
KENTUCKY	YES	70.13%	$136,578,400	$142,587,850	$5,362,501,971	$207,623,325	$5,154,878,646	$746,282,414	$746,282,414	$142,587,850	$146,152,546	$146,152,546
LOUISIANA	NOT MET	na	NA	FY 2004 ALLOTMENT	NA	NA	NA	NA	NA	$731,960,000	$750,259,000	$750,259,000
MAINE	YES	64.41%	$98,901,600	$103,253,270	$2,491,609,104	$51,447,476	$2,440,161,628	$359,864,477	$359,864,477	$103,253,270	$105,834,602	$105,834,602
MARYLAND	YES	50.00%	$71,821,400	$74,981,542	$6,340,703,178	$130,509,154	$6,210,194,024	$980,556,951	$980,556,951	$74,981,542	$76,856,081	$76,856,081
MASSACHUSETTS	YES	50.00%	$287,285,600	$299,926,166	$12,324,081,045	$0	$12,324,081,045	$1,945,907,533	$1,945,907,533	$299,926,166	$307,424,320	$307,424,320
MICHIGAN	YES	60.27%	$249,608,800	$260,591,587	$10,527,467,060	$420,268,502	$10,107,198,558	$1,514,383,734	$1,514,383,734	$260,591,587	$267,106,377	$267,106,377
MISSISSIPPI	YES	75.84%	$143,642,800	$149,963,083	$3,926,907,637	$211,863,454	$3,715,044,183	$529,603,291	$529,603,291	$149,963,083	$153,712,160	$153,712,160
MISSOURI	YES	63.19%	$446,234,600	$465,868,922	$7,648,493,348	$737,377,891	$6,911,115,457	$1,023,746,948	$1,023,746,948	$465,868,922	$477,515,645	$477,515,645
NEVADA	YES	50.00%	$43,563,800	$45,480,607	$1,376,535,435	$92,878,022	$1,283,657,413	$202,682,749	$202,682,749	$45,480,607	$46,617,622	$46,617,622
NEW HAMPSHIRE	YES	50.00%	$150,800,000	$157,435,200	$1,307,557,646	$231,291,938	$1,076,265,708	$169,936,691	$169,936,691	$157,435,200	$161,371,080	$161,371,080
NEW JERSEY	YES	50.00%	$606,361,000	$633,040,884	$9,481,301,639	$1,225,311,734	$8,255,989,905	$1,303,577,353	$1,303,577,353	$633,040,884	$648,866,906	$648,866,906
NEW YORK	YES	50.00%	$1,512,959,000	$1,579,529,196	$47,678,723,205	$3,116,227,351	$44,562,495,854	$7,036,183,556	$7,036,183,556	$1,579,529,196	$1,619,017,426	$1,619,017,426
NORTH CAROLINA	YES	64.60%	$277,866,400	$290,092,522	$10,888,466,523	$457,058,210	$10,431,408,313	$1,537,343,674	$1,537,343,674	$290,092,522	$297,344,835	$297,344,835
OHIO	YES	62.14%	$382,655,000	$399,491,820	$14,003,331,113	$722,528,156	$13,280,802,957	$1,975,115,506	$1,975,115,506	$399,491,820	$409,479,116	$409,479,116
PENNSYLVANIA	YES	54.52%	$528,652,600	$551,913,314	$17,113,120,743	$718,114,038	$16,395,006,705	$2,522,640,919	$2,522,640,919	$551,913,314	$565,711,147	$565,711,147
RHODE ISLAND	YES	52.59%	$61,224,800	$63,918,691	$1,874,745,061	$122,295,562	$1,752,449,499	$272,465,097	$272,465,097	$63,918,691	$65,516,658	$65,516,658
SOUTH CAROLINA	YES	70.07%	$308,478,800	$322,051,867	$4,546,369,802	$471,104,844	$4,075,264,958	$590,088,822	$590,088,822	$322,051,867	$330,103,164	$330,103,164
TENNESSEE* /3	na	na	na	na	na	na	na	na	na	$305,451,928	$305,451,928	$305,451,928
TEXAS	YES	59.44%	$900,711,000	$940,342,284	$23,000,014,985	$1,745,662,859	$21,254,352,126	$3,195,679,655	$3,195,679,655	$940,342,284	$963,850,841	$963,850,841
VERMONT	YES	59.45%	$21,193,200	$22,125,701	$1,189,152,604	$36,548,781	$1,152,603,823	$173,291,374	$173,291,374	$22,125,701	$22,678,844	$22,678,844
VIRGINIA	YES	50.00%	$82,519,327	$86,150,177	$5,692,752,496	$145,270,794	$5,547,481,702	$875,918,163	$875,918,163	$86,150,177	$88,303,931	$88,303,931
WASHINGTON	YES	50.94%	$174,255,200	$181,922,429	$6,554,567,723	$334,750,222	$6,219,817,501	$976,386,760	$976,386,760	$181,922,429	$186,470,490	$186,470,490
WEST VIRGINIA	YES	73.73%	$63,579,600	$66,377,102	$2,420,608,803	$73,389,872	$2,347,218,931	$336,420,771	$336,420,771	$66,377,102	$68,036,530	$68,036,530
TOTAL			$9,183,914,127	$9,588,006,349	$304,251,218,793	$16,176,590,548	$288,074,628,245	$44,234,860,325	$44,234,860,325	$10,635,418,275	$10,893,417,434	$10,893,417,434
LOW DSH STATES		FY 2009 FMAPS	Prior FY 2008 Allotments									
ALASKA		50.53%	$19,186,622	$20,030,833	$1,065,133,940	$15,329,432	$1,049,804,508	$165,211,384	$165,211,384	$20,030,833	$20,531,604	$20,531,604
ARKANSAS		72.81%	$40,632,340	$42,420,163	$3,387,530,449	$63,169,873	$3,324,360,576	$477,645,177	$477,645,177	$42,420,163	$43,480,667	$43,480,667
DELAWARE		50.00%	$8,527,387	$8,902,592	$1,211,409,046	$5,853,198	$1,205,555,848	$190,350,923	$190,350,923	$8,902,592	$9,125,157	$9,125,157
IDAHO		69.77%	$15,482,811	$16,164,055	$1,251,982,777	$0	$1,251,982,777	$181,445,397	$181,445,397	$16,164,055	$16,568,156	$16,568,156
IOWA		62.62%	$37,093,883	$38,726,014	$2,895,657,819	$49,788,074	$2,845,869,745	$422,461,549	$422,461,549	$38,726,014	$39,694,164	$39,694,164
MINNESOTA		50.00%	$70,350,945	$73,446,387	$7,300,893,418	$128,112,005	$7,172,781,413	$1,132,544,434	$1,132,544,434	$73,446,387	$75,282,547	$75,282,547
MONTANA		68.04%	$10,691,523	$11,161,950	$867,917,221	$16,393,062	$851,524,159	$124,063,606	$124,063,606	$11,161,950	$11,440,999	$11,440,999
NEBRASKA		59.54%	$26,654,661	$27,827,466	$1,575,671,426	$41,747,322	$1,533,924,104	$230,533,886	$230,533,886	$27,827,466	$28,523,153	$28,523,153
NEW MEXICO		70.88%	$19,186,622	$20,030,833	$3,244,639,530	$28,079,784	$3,216,559,746	$464,653,033	$464,653,033	$20,030,833	$20,531,604	$20,531,604
NORTH DAKOTA		63.15%	$8,997,202	$9,393,079	$567,171,228	$1,529,479	$565,641,749	$83,801,235	$83,801,235	$9,393,079	$9,627,906	$9,627,906
OKLAHOMA		65.90%	$34,109,548	$35,610,368	$3,766,999,610	$55,539,237	$3,711,460,373	$544,531,143	$544,531,143	$35,610,368	$36,500,627	$36,500,627
OREGON		62.45%	$42,636,936	$44,512,961	$3,630,207,539	$74,866,624	$3,555,340,915	$528,121,404	$528,121,404	$44,512,961	$45,625,785	$45,625,785
SOUTH DAKOTA		62.55%	$10,403,173	$10,860,913	$708,098,958	$2,249,851	$705,849,107	$104,809,167	$104,809,167	$10,860,913	$11,132,436	$11,132,436
UTAH		70.71%	$18,478,571	$19,291,628	$1,596,851,204	$25,212,181	$1,571,639,023	$227,144,804	$227,144,804	$19,291,628	$19,773,919	$19,773,919
WISCONSIN		59.38%	$89,042,355	$92,960,219	$6,537,704,026	$18,606,884	$6,519,097,142	$980,423,778	$980,423,778	$92,960,219	$95,284,224	$95,284,224
WYOMING		50.00%	$213,184	$222,564	$518,684,497	$292,145	$518,392,352	$81,851,424	$81,851,424	$222,564	$228,128	$228,128
TOTAL LOW DSH STATES			$451,687,763	$471,562,025	$40,126,552,688	$526,769,151	$39,599,783,537	$5,939,592,344	$5,939,592,344	$471,562,025	$483,351,076	$483,351,076
TOTAL			$9,635,601,890	$10,059,568,373	$344,377,771,481	$16,703,359,699	$327,674,411,782	$50,174,452,668	$50,174,452,668	$11,106,980,300	$11,376,768,510	$11,376,768,510

FOOTNOTES:

/1 "YES", if FY 2009 or prior fiscal year is the "Fiscal Year Specified", as determined under section 1923(f)(3)(D) of the Social Security Act; "NOT MET", if Fiscal Year Specified has not occurred, and "na" for States that this provision is not applicable.

/2 For Non-Low DSH States, entries in Columns C through Column K are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B). The entry in Column D is the actual prior year (FY 2008) DSH allotment, and for States that FY 2009 is the Fiscal Year Specified, the prior FY 2008 DSH allotment was equal to the FY 2004 allotment.

/3 Hawaii and Tennessee DSH allotments determined under section 1923(f)(6) of the Act; under this section, Tennessee's DSH payments are limited to 30% of DSH allotment.

CHART 2. PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2011

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2011 FMAPS	FY 2010 DSH Allotment For States Meeting Test /2, /3	FY 2010 Allotments x CPIU Increase: 1.018	FY 2011 TC MAP Exp. Incl. DSH	FY 2011 TC DSH Expenditures	FY 2011 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2010 Allotment or 12% Limit (MAX of D or I)	FY 2011 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
ALABAMA	YES	68.54%	$302,384,578	$307,827,500	$4,826,148,000	$440,496,000	$4,385,652,000	$637,975,072	$637,975,072	$307,827,500
ARIZONA	YES	65.85%	$99,565,654	$101,357,836	$10,401,258,000	$118,590,000	$10,282,668,000	$1,508,888,441	$1,508,888,441	$101,357,836
CALIFORNIA	YES	50.00%	$1,078,013,311	$1,097,417,551	$58,275,566,000	$769,211,000	$57,506,355,000	$9,079,950,789	$9,079,950,789	$1,097,417,551
COLORADO	YES	50.00%	$90,961,214	$92,598,516	$4,397,772,000	$191,132,000	$4,206,640,000	$664,206,316	$664,206,316	$92,598,516
CONNECTICUT	YES	50.00%	$196,672,896	$200,213,008	$5,688,351,000	$221,950,000	$5,466,401,000	$863,115,947	$863,115,947	$200,213,008
DISTRICT OF COLUMBIA	YES	70.00%	$60,231,074	$61,315,233	$1,958,244,000	$92,742,000	$1,865,502,000	$270,176,152	$270,176,152	$61,315,233
FLORIDA	YES	55.45%	$196,672,896	$200,213,008	$18,859,472,000	$385,846,000	$18,473,626,000	$2,829,079,572	$2,829,079,572	$200,213,008
GEORGIA	YES	65.33%	$264,279,204	$269,036,230	$7,725,417,000	$430,126,000	$7,295,291,000	$1,072,420,089	$1,072,420,089	$269,036,230
HAWAII* /4	na	na	na	na	na	na	na	na	na	$10,000,000
ILLINOIS	YES	50.20%	$211,423,363	$215,228,984	$13,364,740,000	$439,828,000	$12,924,912,000	$2,038,211,254	$2,038,211,254	$215,228,984
INDIANA	YES	66.52%	$210,194,158	$213,977,653	$7,207,283,000	$253,250,000	$6,954,033,000	$1,018,156,145	$1,018,156,145	$213,977,653
KANSAS	YES	59.05%	$40,563,785	$41,293,933	$2,646,744,000	$67,360,000	$2,579,384,000	$388,470,032	$388,470,032	$41,293,933
KENTUCKY	YES	71.49%	$142,587,850	$145,154,431	$6,004,123,000	$207,429,000	$5,796,694,000	$835,916,599	$835,916,599	$145,154,431
LOUISIANA	NOT MET	na	NA	FY 2004 ALLOTMENT	NA	NA	NA	NA	NA	$731,960,000
MAINE	YES	63.80%	$103,253,270	$105,111,829	$2,257,145,000	$51,366,000	$2,205,779,000	$326,012,433	$326,012,433	$105,111,829
MARYLAND	YES	50.00%	$74,981,542	$76,331,210	$7,997,196,000	$126,535,000	$7,870,661,000	$1,242,735,947	$1,242,735,947	$76,331,210
MASSACHUSETTS	YES	50.00%	$299,926,166	$305,324,837	$13,590,280,000	$0	$13,590,280,000	$2,145,833,684	$2,145,833,684	$305,324,837
MICHIGAN	YES	65.79%	$260,591,587	$265,282,236	$12,378,082,000	$402,931,000	$11,975,151,000	$1,757,602,196	$1,757,602,196	$265,282,236
MISSISSIPPI	YES	74.73%	$149,963,083	$152,662,418	$4,606,971,000	$213,419,000	$4,393,552,000	$628,082,527	$628,082,527	$152,662,418
MISSOURI	YES	63.29%	$465,868,922	$474,254,563	$8,250,497,000	$596,335,000	$7,654,162,000	$1,133,395,000	$1,133,395,000	$474,254,563
NEVADA	YES	51.61%	$45,480,607	$46,299,258	$1,538,141,000	$90,961,000	$1,447,180,000	$226,273,042	$226,273,042	$46,299,258
NEW HAMPSHIRE	YES	50.00%	$157,435,200	$160,269,034	$1,543,334,000	$271,519,000	$1,271,815,000	$200,812,895	$200,812,895	$160,269,034
NEW JERSEY	YES	50.00%	$633,040,884	$644,435,620	$11,223,580,000	$1,397,655,000	$9,825,925,000	$1,551,461,842	$1,551,461,842	$644,435,620
NEW YORK	YES	50.00%	$1,579,529,196	$1,607,960,722	$59,048,936,000	$3,545,215,000	$55,503,721,000	$8,763,745,421	$8,763,745,421	$1,607,960,722
NORTH CAROLINA	YES	64.71%	$290,092,522	$295,314,187	$9,645,892,000	$172,589,000	$9,473,303,000	$1,395,600,312	$1,395,600,312	$295,314,187
OHIO	YES	63.69%	$399,491,820	$406,682,673	$15,989,792,000	$93,433,000	$15,896,359,000	$2,350,409,994	$2,350,409,994	$406,682,673
PENNSYLVANIA	YES	55.64%	$551,913,314	$561,847,754	$18,619,215,000	$818,158,000	$17,801,057,000	$2,723,512,772	$2,723,512,772	$561,847,754
RHODE ISLAND	YES	52.97%	$63,918,691	$65,069,227	$2,085,644,000	$129,739,000	$1,955,905,000	$303,454,102	$303,454,102	$65,069,227
SOUTH CAROLINA	YES	70.04%	$322,051,867	$327,848,801	$5,357,941,000	$459,811,000	$4,898,130,000	$709,300,535	$709,300,535	$327,848,801
TENNESSEE* /4	na	na	na	na	na	na	na	na	na	$305,451,928
TEXAS	YES	60.56%	$940,342,284	$957,268,445	$28,660,618,000	$1,624,987,000	$27,035,631,000	$4,045,991,302	$4,045,991,302	$957,268,445
VERMONT	YES	58.71%	$22,125,701	$22,523,964	$1,322,564,000	$37,449,000	$1,285,115,000	$193,831,989	$193,831,989	$22,523,964
VIRGINIA	YES	50.00%	$86,150,177	$87,700,880	$7,511,722,000	$231,873,000	$7,279,849,000	$1,149,449,842	$1,149,449,842	$87,700,880
WASHINGTON	YES	50.00%	$181,922,429	$185,197,033	$7,438,967,000	$320,833,000	$7,118,134,000	$1,123,915,895	$1,123,915,895	$185,197,033
WEST VIRGINIA	YES	73.24%	$66,377,102	$67,571,890	$2,635,998,000	$90,628,000	$2,545,370,000	$365,296,340	$365,296,340	$67,571,890
TOTAL			$9,588,006,347	$9,760,590,461	$363,057,633,000	$14,293,396,000	$348,764,237,000	$53,543,284,476	$53,543,284,476	$10,808,002,392
LOW DSH STATES		FY 2011 FMAPS	Prior FY 2010 Allotments							
ALASKA		50.00%	$20,030,833	$20,391,388	$1,371,636,000	$24,036,000	$1,347,600,000	$212,778,947	$212,778,947	$20,391,388
ARKANSAS		71.37%	$42,420,163	$43,183,726	$4,365,761,000	$61,482,000	$4,304,279,000	$620,912,364	$620,912,364	$43,183,726
DELAWARE		53.15%	$8,902,592	$9,062,839	$1,272,266,000	$6,302,000	$1,265,964,000	$196,216,729	$196,216,729	$9,062,839
IDAHO		68.85%	$16,164,055	$16,455,008	$1,620,576,000	$24,470,000	$1,596,106,000	$231,961,790	$231,961,790	$16,455,008
IOWA		62.63%	$38,726,014	$39,423,082	$3,430,242,000	$26,024,000	$3,404,218,000	$505,327,687	$505,327,687	$39,423,082
MINNESOTA		50.00%	$73,446,387	$74,768,422	$8,630,736,000	$158,992,000	$8,471,744,000	$1,337,643,789	$1,337,643,789	$74,768,422
MONTANA		66.81%	$11,161,950	$11,362,865	$1,005,028,000	$17,553,000	$987,475,000	$144,440,514	$144,440,514	$11,362,865
NEBRASKA		58.44%	$27,827,466	$28,328,360	$1,847,713,000	$36,684,000	$1,811,029,000	$273,479,418	$273,479,418	$28,328,360
NEW MEXICO		69.78%	$20,030,833	$20,391,388	$3,867,447,000	$28,704,000	$3,838,743,000	$556,318,767	$556,318,767	$20,391,388
NORTH DAKOTA		60.35%	$9,393,079	$9,562,154	$806,347,000	$1,636,000	$804,711,000	$120,531,894	$120,531,894	$9,562,154
OKLAHOMA		64.94%	$35,610,368	$36,251,355	$4,856,638,000	$59,462,000	$4,797,176,000	$706,147,207	$706,147,207	$36,251,355
OREGON		62.85%	$44,512,961	$45,314,194	$4,886,816,000	$71,466,000	$4,815,350,000	$714,205,894	$714,205,894	$45,314,194
SOUTH DAKOTA		61.25%	$10,860,913	$11,056,409	$845,563,000	$713,000	$844,850,000	$126,084,213	$126,084,213	$11,056,409
UTAH		71.13%	$19,291,628	$19,638,877	$1,902,497,000	$27,389,000	$1,875,108,000	$270,677,691	$270,677,691	$19,638,877
WISCONSIN		60.16%	$92,960,219	$94,633,503	$7,225,547,000	$154,393,000	$7,071,154,000	$1,059,968,334	$1,059,968,334	$94,633,503
WYOMING		50.00%	$222,564	$226,570	$546,904,000	$445,000	$546,459,000	$86,283,000	$86,283,000	$226,570
TOTAL LOW DSH STATES			$471,562,025	$480,050,141	$48,481,717,000	$699,751,000	$47,781,966,000	$7,162,978,239	$7,162,978,239	$480,050,140
TOTAL			$10,059,568,372	$10,240,640,603	$411,539,350,000	$14,993,147,000	$396,546,203,000	$60,706,262,715	$60,706,262,715	$11,288,052,532

FOOTNOTES:

/1 'YES', if FY 2010 or other prior fiscal year is the 'Fiscal Year Specified', as determined under section 1923(f)(3)(D) of the Social Security Act; and 'NOT MET', if the 'Fiscal Year Specified' has not occurred, and NA for States for which this provision is not applicable.

/2 For Non-Low DSH States, entries in Columns C through Column K are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B) in this fiscal year or a prior fiscal year; the entry in Column D is the actual prior year DSH allotment for such States. For States not meeting such test, the prior fiscal year allotment would be equal to the FY 2004 allotment.

/3 The DSH Allotments in Column D are not the actual FY 2010 DSH Allotments; rather, under section 1923(f)(3) of the Social Security Act, they are the allotments as would have been determined without regard to section 5002 of P.L. 111-5.

/4 Hawaii and Tennessee DSH allotments determined under section 1923(f)(6) of the Act; under such section, Tennessee's DSH payments are limited to 30% of the DSH allotment.

										CHART 3. FINAL IMD DSH LIMIT FOR FY:	2009
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2009 ALLOTMENT IN FS UNDER ARRA	FY 2009 FMAP	FY 2009 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2009 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2009 IMD LIMIT IN FS U/ARRA Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$309,944,192	67.98%	$455,934,381	$4,862,082	$4,451,770	**$3,026,313**
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$102,054,795	65.77%	$155,169,218	$36,100,922	$28,474,900	**$18,727,942**
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,104,963,644	50.00%	$2,209,927,288	$1,569,048	$1,555,919	**$777,960**
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$93,235,244	50.00%	$186,470,488	$635,594	$594,776	**$297,388**
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$201,589,718	50.00%	$403,179,436	$104,088,335	$104,088,335	**$52,044,167**
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$61,736,851	70.00%	$88,195,501	$12,527,875	$6,545,136	**$4,581,595**
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$201,589,718	55.40%	$363,880,357	$120,080,518	$120,080,518	**$66,524,607**
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$270,886,184	64.49%	$420,043,703	$0	$0	**$0**
HAWAII	$0	$0	$0	0.00%	$10,000,000	55.11%	$18,145,527	$0	$0	**$0**
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$216,708,947	50.32%	$430,661,659	$95,008,444	$89,408,276	**$44,990,244**
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$215,449,012	64.26%	$335,277,018	$110,641,416	$110,641,416	**$71,098,174**
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$41,577,880	60.08%	$69,204,194	$22,837,384	$22,837,384	**$13,720,700**
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$146,152,546	70.13%	$208,402,319	$39,762,056	$37,443,073	**$26,258,827**
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$750,259,000	71.31%	$1,052,109,101	$115,436,650	$115,436,650	**$82,317,875**
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$105,834,602	64.41%	$164,313,930	$54,223,597	$54,223,597	**$34,925,419**
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$76,856,081	50.00%	$153,712,162	$50,725,013	$50,725,013	**$25,362,507**
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$307,424,320	50.00%	$614,848,640	$112,899,029	$105,635,054	**$52,817,527**
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$267,106,377	60.27%	$443,182,972	$146,250,381	$146,250,381	**$88,145,104**
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$153,712,160	75.84%	$202,679,536	$0	$0	**$0**
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$477,515,645	63.19%	$755,682,299	$214,766,296	$207,234,618	**$130,951,555**
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$46,617,622	50.00%	$93,235,244	$0	$0	**$0**
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$161,371,080	50.00%	$322,742,160	$106,504,913	$94,753,948	**$47,376,974**
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$648,866,906	50.00%	$1,297,733,812	$423,879,189	$357,370,461	**$178,685,231**
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,619,017,426	50.00%	$3,238,034,852	$647,849,112	$605,000,000	**$302,500,000**
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$297,344,835	64.60%	$460,286,122	$151,894,420	$151,894,420	**$98,123,796**
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$409,479,116	62.14%	$658,962,208	$97,857,771	$93,432,758	**$58,059,116**
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$565,711,147	54.52%	$1,037,621,326	$342,415,038	$342,415,038	**$186,684,679**
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$65,516,658	52.59%	$124,580,068	$2,693,593	$2,397,833	**$1,261,020**
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$330,103,164	70.07%	$471,104,844	$77,390,124	$72,076,341	**$50,503,892**
TENNESSEE	$0	$0	$0	0.00%	$305,451,928	64.28%	$475,189,683	$0	$0	**$0**
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$963,850,841	59.44%	$1,621,552,559	$313,494,431	$292,513,592	**$173,870,079**
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$22,678,844	59.45%	$38,147,761	$11,911,984	$9,071,297	**$5,392,886**
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$88,303,931	50.00%	$176,607,862	$10,010,599	$7,770,268	**$3,885,134**
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$186,470,490	50.94%	$366,059,069	$120,799,493	$120,799,493	**$61,535,262**
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$68,036,530	73.73%	$92,277,947	$20,301,279	$18,887,045	**$13,925,418**
TOTAL	**$13,402,460,846**	**$4,118,758,904**	**$17,521,219,750**		**$10,893,417,434**		**$19,205,155,248**	**$3,569,416,586**	**$3,374,009,309**	**$1,898,371,391**
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$20,531,604	50.53%	$40,632,503	$13,408,726	$13,408,726	**$6,775,429**
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$43,480,667	72.81%	$59,717,988	$15,092,533	$819,351	**$596,569**
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,125,157	50.00%	$18,250,314	$6,022,604	$6,022,604	**$3,011,302**
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,568,156	69.77%	$23,746,820	$0	$0	**$0**
IOWA	$12,011,250	$0	$12,011,250	0.00%	$39,694,164	62.62%	$63,388,956	$0	$0	**$0**
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$75,282,547	50.00%	$150,565,094	$26,834,837	$5,257,214	**$2,628,607**
MONTANA	$237,048	$0	$237,048	0.00%	$11,440,999	68.04%	$16,815,107	$0	$0	**$0**
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$28,523,153	59.54%	$47,905,867	$10,504,728	$1,811,337	**$1,078,470**
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$20,531,604	70.88%	$28,966,710	$1,094,222	$254,786	**$180,592**
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$9,627,906	63.15%	$15,246,090	$5,031,210	$988,478	**$624,224**
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$36,500,627	65.90%	$55,387,901	$7,783,310	$3,273,248	**$2,157,070**
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$45,625,785	62.45%	$73,059,704	$24,109,702	$19,975,092	**$12,474,445**
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,132,436	62.55%	$17,797,659	$5,873,228	$751,299	**$469,938**
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$19,773,919	70.71%	$27,964,813	$5,736,881	$934,586	**$660,846**
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$95,284,224	59.38%	$160,465,180	$52,953,509	$4,492,011	**$2,667,356**
WYOMING	$0	$0	$0	0.00%	$228,128	50.00%	$456,256	$0	$0	**$0**
TOTAL LOW DSH STATES	**$98,662,480**	**$63,238,167**	**$161,900,647**		**$483,351,076**		**$800,366,962**	**$174,445,492**	**$57,988,732**	**$33,324,848**
TOTAL	**$13,501,123,326**	**$4,181,997,071**	**$17,683,120,397**		**$11,376,768,510**		**$20,005,522,210**	**$3,743,862,078**	**$3,431,998,041**	**$1,931,696,239**

										CHART 4. PRELIMINARY IMD DSH LIMIT FOR FY:	2011
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2011 ALLOTMENT IN FS	FY 2011 FMAP	FY 2011 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2011 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2011 IMD LIMIT IN FS Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$307,827,500	68.54%	$449,120,951	$4,789,424	$4,451,770	**$3,051,243**
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$101,357,836	65.85%	$153,922,302	$35,810,821	$28,474,900	**$18,750,722**
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,097,417,551	50.00%	$2,194,835,102	$1,558,333	$1,555,919	**$777,960**
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$92,598,516	50.00%	$185,197,032	$631,254	$594,776	**$297,388**
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$200,213,008	50.00%	$400,426,016	$103,377,488	$103,377,488	**$51,688,744**
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$61,315,233	70.00%	$87,593,190	$12,442,319	$6,545,136	**$4,581,595**
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$200,213,008	55.45%	$361,069,446	$119,152,917	$119,152,917	**$66,070,293**
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$269,036,230	65.33%	$411,811,159	$0	$0	**$0**
HAWAII	$0	$0	$0	0.00%	$10,000,000	51.79%	$19,308,747	$0	$0	**$0**
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$215,228,984	50.20%	$428,742,996	$94,585,167	$89,408,276	**$44,882,955**
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$213,977,653	66.52%	$321,674,163	$106,152,474	$106,152,474	**$70,612,625**
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$41,293,933	59.05%	$69,930,454	$23,077,050	$23,077,050	**$13,626,998**
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$145,154,431	71.49%	$203,041,588	$38,739,257	$37,443,073	**$26,768,053**
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	63.61%	$1,150,699,576	$126,253,926	$126,253,926	**$80,310,122**
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$105,111,829	63.80%	$164,752,083	$54,368,187	$54,368,187	**$34,686,904**
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$76,331,210	50.00%	$152,662,420	$50,378,599	$50,378,599	**$25,189,299**
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$305,324,837	50.00%	$610,649,674	$112,128,011	$105,635,054	**$52,817,527**
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$265,282,236	65.79%	$403,225,773	$133,064,505	$133,064,505	**$87,543,138**
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$152,662,418	74.73%	$204,285,318	$0	$0	**$0**
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$474,254,563	63.29%	$749,335,698	$212,962,580	$207,234,618	**$131,158,790**
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$46,299,258	51.61%	$89,709,859	$0	$0	**$0**
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$160,269,034	50.00%	$320,538,068	$105,777,562	$94,753,948	**$47,376,974**
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$644,435,620	50.00%	$1,288,871,240	$420,984,404	$357,370,461	**$178,685,231**
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,607,960,722	50.00%	$3,215,921,444	$643,424,777	$605,000,000	**$302,500,000**
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$295,314,187	64.71%	$456,365,611	$150,600,652	$150,600,652	**$97,453,682**
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$406,682,673	63.69%	$638,534,578	$94,824,210	$93,432,758	**$59,507,324**
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$561,847,754	55.64%	$1,009,791,075	$333,231,055	$333,231,055	**$185,409,759**
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$65,069,227	52.97%	$122,841,659	$2,656,007	$2,397,833	**$1,270,132**
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$327,848,801	70.04%	$468,087,951	$76,894,528	$72,076,341	**$50,482,269**
TENNESSEE	$0	$0	$0	0.00%	$305,451,928	65.85%	$463,860,179	$0	$0	**$0**
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$957,268,445	60.56%	$1,580,694,262	$305,595,305	$292,513,592	**$177,146,231**
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$22,523,964	58.71%	$38,364,783	$11,979,751	$9,071,297	**$5,325,758**
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$87,700,880	50.00%	$175,401,760	$9,942,234	$7,770,268	**$3,885,134**
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$185,197,033	50.00%	$370,394,066	$122,230,042	$122,230,042	**$61,115,021**
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$67,571,890	73.24%	$92,260,909	$20,297,531	$18,887,045	**$13,832,872**
TOTAL	**$13,402,460,846**	**$4,118,758,904**	**$17,521,219,750**		**$10,808,002,392**		**$19,053,921,131**	**$3,527,910,366**	**$3,356,503,958**	**$1,896,804,743**
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$20,391,388	50.00%	$40,782,776	$13,458,316	$13,458,316	**$6,729,158**
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$43,183,726	71.37%	$60,506,832	$15,291,898	$819,351	**$584,771**
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,062,839	53.15%	$17,051,437	$5,626,974	$5,626,974	**$2,990,737**
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,455,008	68.85%	$23,899,794	$0	$0	**$0**
IOWA	$12,011,250	$0	$12,011,250	0.00%	$39,423,082	62.63%	$62,946,004	$0	$0	**$0**
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$74,768,422	50.00%	$149,536,844	$26,651,574	$5,257,214	**$2,628,607**
MONTANA	$237,048	$0	$237,048	0.00%	$11,362,865	66.81%	$17,007,731	$0	$0	**$0**
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$28,328,360	58.44%	$48,474,264	$10,629,366	$1,811,337	**$1,058,545**
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$20,391,388	69.78%	$29,222,396	$1,103,881	$254,786	**$177,790**
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$9,562,154	60.35%	$15,844,497	$5,228,684	$988,478	**$596,546**
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$36,251,355	64.94%	$55,822,844	$7,844,430	$3,273,248	**$2,125,647**
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$45,314,194	62.85%	$72,098,956	$23,792,656	$19,975,092	**$12,554,345**
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,056,409	61.25%	$18,051,280	$5,956,922	$751,299	**$460,171**
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$19,638,877	71.13%	$27,609,837	$5,664,059	$934,586	**$664,771**
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$94,633,503	60.16%	$157,303,030	$51,910,000	$4,492,011	**$2,702,394**
WYOMING	$0	$0	$0	0.00%	$226,570	50.00%	$453,140	$0	$0	**$0**
TOTAL LOW DSH STATES	**$98,662,480**	**$63,238,167**	**$161,900,647**		**$480,050,140**		**$796,611,663**	**$173,158,761**	**$57,642,692**	**$33,273,482**
TOTAL	**$13,501,123,326**	**$4,181,997,071**	**$17,683,120,397**		**$11,288,052,532**		**$19,850,532,794**	**$3,701,069,127**	**$3,414,146,650**	**$1,930,078,225**

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 20, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 17, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–32979 Filed 12–30–10; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Grant Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of noncompetitive program supplemental award.

SUMMARY: HRSA will be issuing non-competitive supplemental grant funding to the University of Wisconsin, Laboratory of Hygiene, Madison, Wisconsin, under the Maternal Child and Health Bureau's Blood Lead Proficiency Testing Program. The University of Wisconsin will use these funds to initiate an orderly closeout of HRSA-funded activities which clearly fall within the purview of the Centers for Disease Control and Prevention's "Preventing Lead Poisoning in Young Children" initiative at their National Center for Environmental Health. This action will also accord the University of Wisconsin and the Center additional time to solicit recommendations from the CDC's Advisory Committee on Childhood Lead Poisoning Prevention with respect to future funding for this activity.

The Maternal and Child Health Bureau (MCHB) has continuously supported the National Blood Lead and Erythrocyte Protoprophyrin (EP) Proficiency Testing Program through the University of Wisconsin since 1988. Childhood lead poisoning is a well-characterized public health problem in

the U.S., and is unfortunately over-represented in minority, immigrant, and low socio-economic populations. The proper detection and treatment of lead poisoning relies entirely on the accurate and precise measurement of blood lead concentration. EP is utilized as an adjunct test to indicate the extent and duration of lead exposure, as well as the detection of iron deficiency, another pediatric health issue. Proficiency testing (PT) is a proven method for assuring and improving laboratory test accuracy. This program has cost-effectively provided monthly PT and other lab quality improvement tools to nearly 600 laboratories across the U.S. and beyond. Of note, the primary focus of the program over the last few years has been the integration of new and usually inexperienced participants into the program. An enrollment boom has been fueled by proliferation of the CLIA-waived LeadCare II point of care testing instrument. In the three years since its introduction, LeadCare II enrollment has grown from zero to 300 laboratories, comprising approximately 40 percent of all participants. Continued participation increases, and the fact that those increases are nearly totally comprised of LeadCare II users, represent both a public health success and a challenge for this program. Since its introduction in early 2007, over 300 of these laboratories have enrolled for PT, swelling program participation to 800 laboratories.

SUPPLEMENTARY INFORMATION:

Intended Recipients of the Award: University of Wisconsin, Laboratory of Hygiene, Madison, Wisconsin.

Amount of the Non-Competitive Supplemental Funding: $250,000.

Authority: Section 501(c)(1) of the Social Security Act, as amended.

CFDA Number: 93.110.

Proposed Project Period: January 1, 2008–October 31, 2011.

Justification for Exception to Competition:

The participation of large numbers of these labs in voluntary proficiency was by design, and represents a public health success by assuring blood lead screening accuracy where there would otherwise be no evaluation. Three factors contribute to this. First, is the HRSA support of this program, which has been increased to accommodate the additional labs.

This support allows laboratories to participate at no cost, a vital consideration for voluntary participants. The second factor is the effort of the NBLPT Program to integrate the new technology shortly after it became available, and collaboration with the manufacturer to promote participation. The third factor is that some States have initiated PT requirements, deeming this quality check of sufficient importance to mandate successful participation as a requisite for Medicaid reimbursement. This State-level action illustrates the importance of this PT participation, and may be the beginning of a trend that will serve to increase participation even more.

The University of Wisconsin will use these funds to initiate an orderly closeout of HRSA-funded activities which clearly falls within the purview of the Centers for Disease Control and Prevention's "Preventing Lead Poisoning in Young Children" initiative at their National Center for Environmental Health. This extension with funding will also accord the University of Wisconsin and the Center to solicit recommendations from the CDC's Advisory Committee on Childhood Lead Poisoning Prevention with respect to future funding for this activity.

FOR FURTHER INFORMATION CONTACT: David Heppel, M.D., Director, Division of Child, Adolescent and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18A–30, Rockville, MD 20857; 301–443–2250; *dheppel@hrsa.gov.*

Dated: December 23, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–33063 Filed 12–30–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 2011.

The National Advisory committee on Rural Health will convene its sixty-seventh meeting in the time and place specified below:

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times:

February 23, 2011, 8:45 a.m.–5 p.m.

February 24, 2011, 8:45 a.m.–4 p.m.

February 25, 2011, 8:45 a.m.–11:15 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Phone: (202) 234–0700.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Wednesday morning at 9 a.m. the meeting will be called to order by the Chairperson of the Committee, the Honorable Ronnie Musgrove. There will be an update from officials from the Department of Health and Human Services. This will be followed by a series of panel presentations on key provisions from the Affordable Care Act (ACA). The Committee will be examining the rural implications of several provisions from the ACA, including health insurance exchanges, the Maternal and Early Childhood Home Visitation program and the Community Living Assistance, Services and Support program. The day will conclude with a period of public comment at approximately 4:30 p.m.

Thursday morning at 9 a.m. the Committee will continue to hear panel presentations on ACA-related provisions and will then break into subcommittees on each of those topics for further discussion. The day will conclude with a period of public comment at approximately 4:30 p.m.

Friday morning at 9 a.m. the Committee will summarize key findings from the meeting and develop a work plan for the next quarter and the June meeting.

FOR FURTHER INFORMATION CONTACT: Thomas Morris, MPA, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 10B–45, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Tish Scolnick at the Office of Rural Health Policy (ORHP) via Telephone at (301) 443–0835, or by e-mail at *nscolnick@hrsa.gov.* The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: December 27, 2010,,

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–33062 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The concept meeting, proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel. Contraceptive Clinical Trials Network.

Date: January 12, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 2A01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, Md 20892–9304. (301) 435–6680. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: *December 27, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33067 Filed 12–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: January 10, 2011.

Time: 12:45 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 2A01, Rockville, MD 20852. (Telephone Conference).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304. (301) 435–6680. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: *December 27, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33068 Filed 12–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs", as amended in the revisions listed above, requires {or set} strict standards that Laboratories and

Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (*Formerly:* Bayshore Clinical Laboratory.)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210. 615–255–2400. (*Formerly:* Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053. 504–361–8989/800–433–3823. (*Formerly:* Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (*Formerly:* Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056. 501–202–2783. (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center.)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876. (*Formerly:* Dynacare Kasper Medical Laboratories.)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (*Formerly:* Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (*Formerly:* LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (*Formerly:* LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (*Formerly:* Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (*Formerly:* Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (*Formerly:* University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (*Formerly:* Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084. 800–729–6432. (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304. 800–877–2520. (*Formerly:* SmithKline Beecham Clinical Laboratories.)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.

---

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x1276.
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166. 305–593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

Dated: December 15, 2010.

Elaine Parry,

Director, Office of Management, Technology, and Operations, SAMHSA.

[FR Doc. 2010–32908 Filed 12–30–10; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: CBP Regulations Pertaining to Customs Brokers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0034.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: CBP Regulations Pertaining to Customs Brokers (19 CFR part 111). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information being collected. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 67094) on November 1, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 2, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: CBP Regulations Pertaining to Customs Brokers (19 CFR Part 111).

OMB Number: 1651–0034.

Form Numbers: CBP Forms 3124 and 3124E.

Abstract: The information contained in part 111 of the CBP regulations governs the licensing and conduct of customs brokers. Specifically, an individual who wishes to take the broker exam would complete CBP Form 3124E, "Application for Customs Broker License Exam"; or to apply for a broker license, CBP Form 3124, "Application for Customs Broker License" must be completed. The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. The information collected from customs brokers is provided for by 19 U.S.C. 1641. CBP Forms 3124 and 3124E may be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/*. Further information about the customs broker exam and how to apply for it may be found at *http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/broker_exam/notice_of_exam.xml.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

CBP Form 3124E, "Application for Customs Broker License Exam

Estimated Number of Respondents: 2,300.

Total Number of Estimated Annual Responses: 2,300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,300.

Estimated Total Annual Cost to the Public: $466,000.

CBP Form 3124, "Application for Customs Broker License"

Estimated Number of Respondents: 300.

Total Number of Estimated Annual Responses: 300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 300.

Triennial Report (19 CFR 111.30)

Estimated Number of Respondents: 3,833.

Total Number of Estimated Annual Responses: 3,833.

Estimated Time per Response: .5 hours.

Estimated Total Annual Burden Hours: 1,917.

Estimated Total Annual Cost to the Public: $383,300.

National Broker Permit Application (19 CFR 111.19)

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to the Public: $112,500.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor,

Washington, DC 20229–1177, at 202–325–0265.

Dated: December 28, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–33091 Filed 12–30–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0129.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Haiti Haitian Hemispheric Opportunity through Partnership Encouragement ("Haiti HOPE") Act of 2006. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 67753) on November 3, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 2, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Haitian Hemispheric Opportunity through Partnership Encouragement ("Haiti HOPE") Act of 2006.

OMB Number: 1651–0129.

Abstract: Title V of the Tax Relief and Health Care Act of 2006 amended the Caribbean Basin Economic Recovery Act (CBERA 19 U.S.C. 2701–2707) and authorized the President to extend additional trade benefits to Haiti. This trade program, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 ("Haiti HOPE Act"), provides for duty-free treatment for certain apparel articles and certain wire harness automotive components from Haiti.

Those wishing to claim duty-free treatment under this program must prepare a declaration of compliance which identifies and details the costs of the beneficiary components of production and non-beneficiary components of production to show that the 50% value content requirement was satisfied. The information collected under the Haiti Hope Act is provided for in 19 CFR 10.848.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 12.

Estimated Number of Annual Responses per Respondent: 17.

Estimated Number of Total Annual Responses: 204.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 67.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

Dated: December 28, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–33093 Filed 12–30–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–28]

Notice of Proposed Information Collection for Public Comment; Resident Opportunities and Supportive Services (ROSS) Program Forms for Applying for Funding

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 4, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY

numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington (202) 402–4109, for copies of the proposed forms and other available documents. (This is not a toll-free number). Additional information is provided at *http://www.hud.gov/offices/pih/programs/ph/cn/docs/2010-pre-notice.pdf*.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for the Resident Opportunities and Supportive Services (ROSS) Program.

OMB Approval Number: 2577–0229.

Form Numbers: HUD–52752, HUD–52753, HUD–52754, HUD–52755, HUD–52767, HUD–52768, HUD–52769.

Description of the need for the information and proposed use: Applicants for ROSS Service Coordinator grant funds submit applications for Service Coordinator positions. The grant program is being changed to provide funding for Service Coordinators only. The application is being streamlined. Applicants describe the needs of their residents and the services and partners available in the community, their past performance in similar programs, their ability to commit match funds, and indicate their expected outputs and outcomes.

Respondents: Public Housing Authorities, Tribes/TDHEs, Not-for-profit institutions, Resident Associations.

Frequency of Submission: On occasion.

Number of respondents:

	Annual responses	Hours per response	Burden hours
ROSS SC	400	7	1500
ROSS FSS	250	6	2800

Total Estimated Burden Hours: 4,026.

Status: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Members of affected public: Public housing agencies, non-profits, resident associations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 650 PHAs, Tribes/TDHEs, non-profits, or resident groups apply for funding under ROSS each year. The total burden for application and post-award reporting is 4,026 hours.

Dated: December 20, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Office of Policy, Program, and Legislative Initiatives.

[FR Doc. 2010–33105 Filed 12–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact Amendment.

SUMMARY: This notice publishes approval of the 2010 Amendments to the Menominee Indian Tribe of Wisconsin ("Tribe") and the State of Wisconsin Gaming Compact of 1992, as Amended in 1999, 2000, and 2003.

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment changes the existing duration of the compact from perpetuity to a 25-year term. It also allows the Tribe to reduce the annual revenue sharing payment so long as the money withheld is directed towards various Tribal services benefitting Tribal members.

Dated: December 22, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–33094 Filed 12–30–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–PAGR–1210–6407; 1843SZM]

Meetings of the Paterson Great Falls National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, 10), notice is hereby given of the meeting of the Paterson Great Falls National Historical Park Advisory Commission.

DATES: The Commission will meet on the following days in 2011:

Thursday, January 27, 2011, from 2 until 9 p.m.

Thursday, April 14, 2011, from 2 until 9 p.m.

Thursday, July 14, 2011, from 2 until 9 p.m.

Thursday, October 13, 2011, from 2 until 9 p.m.

ADDRESSES: These meetings will be held at the Paterson Museum at 2 Market Street (intersection of Spruce Street) in Paterson, New Jersey.

FOR FURTHER INFORMATION CONTACT: Bill Bolger, Project Director, Paterson Great Falls National Historical Park National

Park Service, 200 Chestnut Street, Philadelphia, PA 19106: 215–597–1649.

SUPPLEMENTARY INFORMATION: The Paterson Great Falls NHP Federal Advisory Commission was authorized by Congress and signed by the President on March 30, 2009, (Pub. L. 111–11, Title VII, Subtitle A, Section 7001, Subsection e) "to advise the Secretary in the development and implementation of the management plan." The agendas for these meetings will be published by press release.

This meeting will be open to the public and time will be reserved for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim they must submit them in writing. Written comments and requests for agenda items may be submitted electronically to *bill_bolger@nps.gov.* Alternatively, comments and requests may be sent to: Bill Bolger, National Park Service, 200 Chestnut Street, Philadelphia, PA 19106. 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.

Dated: December 22, 2010.

William C. Bolger,

Project Director, Paterson Great Falls NHP and Designated Federal Official for the Commission.

[FR Doc. 2010–33107 Filed 12–30–10; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 and 731–TA–454 (Third Review)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[11] to be assured of consideration, the deadline for responses is February 2, 2011. Comments on the adequacy of responses may be filed with the Commission by March 18, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 12, 1991, the Department of Commerce ("Commerce") issued countervailing duty and antidumping duty orders on imports of fresh and chilled Atlantic salmon from Norway (56 FR 14920, 14921). Following five-year reviews by Commerce and the Commission, effective March 13, 2000, Commerce issued a continuation of the countervailing duty and antidumping duty orders on imports of fresh and chilled Atlantic salmon from Norway (65 FR 13358). Following second five-year reviews by Commerce and the Commission, effective February 13, 2006, Commerce issued a continuation of the countervailing duty order and antidumping duty order on imports of fresh and chilled Atlantic salmon from Norway (71 FR 7512). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is Norway.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission defined the *Domestic Like Product* as fresh and chilled Atlantic salmon, including salmon smolts.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of fresh and chilled Atlantic salmon, including salmon smolts.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative

[11] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–236, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 2, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 18, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order and the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32697 Filed 12–30–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–457–A–D (Third Review)]

Heavy Forged Hand Tools From China

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on heavy forged hand tools from China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on heavy forged hand tools from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–235, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade

be assured of consideration, the deadline for responses is February 2, 2011. Comments on the adequacy of responses may be filed with the Commission by March 18, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 19, 1991, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of the following classes or kinds of heavy forged hand tools from China: (1) Axes and adzes, (2) bars and wedges, (3) hammers and sledges, and (4) picks and mattocks (56 FR 6622). Following the first five-year reviews by Commerce and the Commission, effective August 10, 2000, Commerce issued a continuation of the antidumping duty order on imports of heavy forged hand tools from China (65 FR 48962). Following second five-year reviews by Commerce and the Commission, effective February 16, 2006, Commerce issued a continuation of the antidumping duty orders on imports of heavy forged hand tools from China (71 FR 8276). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission found four *Domestic Like Products:* (1) Axes, adzes, and hewing tools, other than machetes, with or without handles; (2) bar tools, track tools, and wedges; (3) hammers and sledges, with heads weighing two pounds or more, with or without handles; and (4) picks and mattocks, with or without handles.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission found four *Domestic Industries:* (1) Domestic producers of axes, adzes and hewing tools, other than machetes, with or without handles; (2) domestic producers of bar tools, track tools, and wedges; (3) domestic producers of hammers and sledges, with heads weighing two pounds or more, with or without handles; and (4) domestic producers of picks and mattocks, with or without handles. The Commission excluded from the *Domestic Industries* companies that do no more than assemble imported heads with handles purchased from a domestic manufacturer. In the original determinations, the Commission also excluded one domestic producer, Madison Mill, from the *Domestic Industries* under the related parties provision. In the first reviews, the Commission did not find that Madison Mill engaged in sufficient production-related activity to be considered a domestic producer.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A

Commission, 500 E Street, SW., Washington, DC 20436.

separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 2, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 18, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its determinations, and for each of the products identified by Commerce as *Subject Merchandise.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Products,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industries* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industries.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Products.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Products* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and e-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Products* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Products,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Products* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Products* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Products* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Products* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Products* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S.

importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Products* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Products* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Products* and *Domestic Industries;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32699 Filed 12–30–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Third Review)]

Paper Clips From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on paper clips from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 2, 2011. Comments on the adequacy of responses may be filed with the Commission by March 18, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 25, 1994, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of paper clips from China (59 FR 60606). Following five-year reviews by Commerce and the Commission, effective August 15, 2000, Commerce issued a continuation of the antidumping duty order on imports of paper clips from China (65 FR 49784). Following second five-year reviews by Commerce and the Commission, effective February 7, 2006, Commerce issued a continuation of the antidumping duty order on imports of

[1] [1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–237, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

paper clips from China (71 FR 6269). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as certain wire paper clips, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* to consist of all domestic producers of paper clips.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 2, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 18, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number,

fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject*

Country, and such merchandise from other countries.

(13) (optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32698 Filed 12–30–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1541]

NIJ Draft Metal Detector Standards for Public Safety

AGENCY: National Institute of Justice.

ACTION: Notice and request for comments on the Draft Metal Detector Standards for Public Safety.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public the following draft standards for metal detectors:

1. Walk-through Metal Detector Standard for Public Safety.
2. Hand-held Metal Detector Standard for Public Safety.

The opportunity to provide comments on these voluntary standards is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft standard under consideration are directed to the following Web site: *http://www.justnet.org.*

Please note that all comments received are considered part of the public record and may be made available for public inspection online. Such information includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

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 clearly 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 online.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file (which will be made available for public inspection upon request), but not posted online.

DATES: The comment period will be open from January 1, 2011, to February 15, 2011.

FOR FURTHER INFORMATION CONTACT: Casandra Robinson, by telephone at 202–305–2596 [*Note:* this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2010–33081 Filed 12–30–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,575; TA–W–74,575D]

International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Manager Roles; One Teleworker Located in Charleston, WV; International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Band 8 Program Manager Roles; One Teleworker Located in Louisville, KY; 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 November 12, 2010, applicable to workers of International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Band 8 Program Manager Roles, one teleworker location in Charleston, West Virginia. The notice was published in the **Federal Register** on November 23, 2010 (75 FR 71460). The workers provide Relations Analyst and Band 8 Program Manager services.

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm.

New findings show that worker separations occurred during the relevant time period affecting one teleworker in Louisville, Kentucky of International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Band 8 Program Unit. The teleworker in Louisville, Kentucky provided Relations Analyst and Band 8 Program Manager services.

Accordingly, the Department is amending the certification to include one teleworker in Louisville, Kentucky of International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Band 8 Program Unit.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift of services like or directly competitive with the Relations Analyst and Band 8 Program Manager services supplied by the workers to a foreign country.

The amended notice applicable to TA–W–74,575 is hereby issued as follows:

All workers of International Business Machines (IBM) Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Brand 8 Program Manager Roles, one teleworker located in Charleston, West Virginia (TA–W–74,575); International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Brand 8 Program Manager Roles, one teleworker located in Dallas, Texas (TA–W–74,575A); International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Brand 8 Program Manager Roles, two teleworkers located in Atlanta, Georgia (TA–W–74,575B); International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Brand 8 Program Manager Roles, one teleworker

located in Phoenix, Arizona (TA–W–74,575C); and International Business Machines (IBM), Global Sales Operations Organization, Sales and Distribution Business Unit, Relations Analyst and Brand 8 Program Manager Roles, one teleworker located in Louisville, Kentucky (TA–W–74,575D), who became totally or partially separated from employment on or after August 25, 2009, through November 12, 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 in Washington, DC, this 17th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33053 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–73,609

Faurecia Emissions Control Technologies Including On-Site Leased Workers From Adecco Employment Servcies and Emcon Technologies, Troy, MI; 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 June 10, 2010, applicable to workers of Faurecia Emissions Control Technologies, Troy, Michigan, including on-site leased workers from Adecco Employment Services, Troy, Michigan. The Department's notice of determination was published in the **Federal Register** on July 1, 2010 (75 FR 38137).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the supply of corporate shared services such as information technology, financial, human resources, and purchasing support.

The company reports that workers leased from Emcon Technologies were employed on-site at the Troy, Michigan location of Faurecia Emissions Control Technologies. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Emcon Technologies working on-site at the Troy, Michigan location of Faurecia Emissions Control Technologies.

The amended notice applicable to TA–W–73,609 is hereby issued as follows:

All workers of Faurecia Emissions Control Technologies, including on-site leased workers from Adecco Employment Services and Emcon Technologies, Troy, Michigan, who became totally or partially separated from employment on or after February 22, 2009, through June 10, 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 in Washington, DC, this 17th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33052 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,458]

Continental Structural Plastics Including On-Site Leased Workers From Kelly Services and Time Staffing; North Baltimore, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 31, 2008, applicable to workers of Continental Structural Plastics, North Baltimore, Ohio. The notice was published in the **Federal Register** on January 26, 2009 (74 FR 4463).

At the request of the UAW, Local 1889, the Department reviewed the certification for workers of the subject firm. The workers produced exterior body panels and under body structural components for automobiles. The firm has since closed, eliminating the possibility of a new petition to cover these workers.

New information shows that workers leased from Kelly Services and Time Staffing were employed on-site at the North Baltimore, Ohio location of Continental Structural Plastics. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Kelly Services and Time Staffing working on-site at the North Baltimore, Ohio location of Continental Structural Plastics.

The amended notice applicable to TA–W–64,458 is hereby issued as follows:

All workers of Continental Structural Plastics, including on-site leased workers from Kelly Services and Time Staffing, North Baltimore, Ohio, who became totally or partially separated from employment on or after November 11, 2007, through December 31, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33047 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,851; TA–W–70,851A]

Kennametal, Inc., Irwin, PA; Kennametal, Inc., Including On-Site Leased Workers of Spherion Staffing Services, Bedford, 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 March 25, 2010, applicable to workers and former workers of Kennametal, Inc., Irwin, Pennsylvania (subject firm). The Department's Notice of Determination was published in the **Federal Register** on April 23, 2010 (75 FR 21354). The subject workers were engaged in

activities related to the production of tungsten carbide performs and armor piercing products.

Information obtained by the Department revealed that the appropriate subdivision covered by the certification includes an auxiliary facility producing carbide tips.

Based on these findings, the Department is amending this certification to include workers of Kennametal, Inc., Bedford, Pennsylvania, including on-site leased workers of Spherion Staffing Services.

The amended notice applicable to TA–W–70,851 is hereby issued as follows:

All workers of Kennametal, Inc., Irwin, Pennsylvania (TA–W–70,851) and Kennametal, Inc., including on-site leased workers from Spherion Staffing Services, Bedford, Pennsylvania (TA–W–70,851A), who became totally or partially separated from employment on or after May 28, 2008, through March 25, 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 in Washington, DC, this 14th day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33048 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–73,102
Hewlett Packard Company, Personal Systems Group—Desktop (Cupertino only), Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across California and Workers On-Site in: Anaheim, Cupertino, Oxnard, Palo Alto, Roseville, San Diego, and Sunnyvale, CA

TA–W–73,102A
Hewlett Packard Company, Personal Systems Group—Desktop (Fort Collins only), Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Colorado and Workers On-Site in: Colorado Springs and Fort Collins, CO

TA–W–73,102B
Hewlett Packard Company, Personal Systems Group—Desktop (Houston only), Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Texas and Workers On-Site in: Austin, Houston, and Richardson, TX

TA–W–73,102C
Hewlett Packard Company, Personal Systems Group—Desktop (King of Prussia only), Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Pennsylvania and Workers On-Site in: King of Prussia and Philadelphia, PA

TA–W–73,102D
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Alabama

TA–W–73,102E
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Conway, AR

TA–W–73,102F
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Arizona

TA–W–73,102G
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Connecticut and Workers On-Site in: Nashua, CT

TA–W–73,102H
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Florida and Workers On-Site in: Miami, FL

TA–W–73,102I
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Georgia and Workers On-Site in: Alpharetta and Atlanta, GA

TA–W–73,102J
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Des Moines, IA

TA–W–73,102K
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Boise, ID

TA–W–73,102L
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including On-Site Leased Workers of Chimes and Manpower Including Teleworkers Across Illinois and Workers On-Site in: Downers Grove, IL

TA–W–73,102M
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including On-Site Leased Workers of Chimes and Manpower Including Teleworkers Across Indiana and Workers On-Site in: Carmel, Indianapolis, and Plainfield, IN

TA–W–73,102N
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Kansas

TA–W–73,102O
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Kentucky

TA–W–73,102P
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including

Teleworkers Across Massachusetts and Workers On-Site in: Andover, Marlborough, Nashua, and Westborough, MA

TA–W–73,102Q
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Maryland and Workers On-Site in: Bethesda, MD

TA–W–73,102R
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Michigan and Workers On-Site in: Farmington Hills, MI

TA–W–73,102S
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Minnesota and Workers On-Site in: Minneapolis, MN

TA–W–73,102T
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Missouri

TA–W–73,102U
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across North Carolina and Workers On-Site in: Greensboro, NC

TA–W–73,102V
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Omaha, NE

TA–W–73,102W
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across New Hampshire and Workers On-Site in: Marlborough and Nashua, NH

TA–W–73,102X
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across New Jersey

TA–W–73,102Y
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Rio Rancho, NM

TA–W–73,102Z
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across New York and Workers On-Site in: Syracuse, NY

TA–W–73,102AA
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Ohio

TA–W–73,102BB
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Oklahoma

TA–W–73,102CC
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Oregon

TA–W–73,102DD
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Tennessee

TA–W–73,102EE
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Utah

TA–W–73,102FF
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Including Teleworkers Across Virginia and Workers On-Site in: Richmond, VA

TA–W–73,102GG
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Vermont

TA–W–73,102HH
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Washington and Workers On-Site in: Bellevue and Vancouver, WA

TA–W–73,102II
Hewlett Packard Company, Personal Systems Group—Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations Teleworkers Across Wisconsin and Workers On-Site in: Greenville, WI

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 March 2, 2010, applicable to workers of Hewlett Packard Company, Personal Systems Group—Desktop Organization at four separate locations: Cupertino, California (including off-site teleworkers reporting to this location); Fort Collins, Colorado (TA–W–73,102A); Houston, Texas (TA–W–73,102B); and King of Prussia, Pennsylvania (TA–W–73,102C). The Department's notice of determination was published in the **Federal Register** on April 23, 2010 (75 FR 21362).

New investigations were initiated in response to petitions filed on October 20, 2010 by a California State workforce official (TA–W–74,753) and November 23, 2010 by a company official (TA–W–74,917) on behalf of workers in 36 States in the Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations within the Personal Systems Group of the Hewlett Packard Company. The workers are engaged in marketing, sales, call center, customer experience, solutions, engineering, supply chain, research, and product development services for personal computing system products.

The investigations established that workers in the Customer Warranty,

Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations within the Personal Systems Group of the Hewlett Packard Company meet the criteria for certification of Section 222(a) of the Trade Act in the same way as workers certified under TA–W–73,102. Moreover, the investigations established that workers were separated more than one year before the petition date of TA–W–74,753 and that the worker separations were attributable to the same shift of services that were the basis of certification number TA–W–73,102.

Therefore, at the request of the company official, certification number TA–W–73,102 is being amended to include workers in 36 States in the Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations who were totally or partially separated or threatened with total or partial separation on or after December 9, 2008 through March 2, 2012. Petitions TA–W–74,753 and TA–W–74,917 are being terminated.

The amended notice applicable to TA–W–73,102 is hereby issued as follows:

All workers of Hewlett Packard Company, Personal Systems Group, in the following organizations: Desktop Organization, at the following locations only: Cupertino, California (73,102); Fort Collins, Colorado (73,102A); Houston, Texas (73,102B); and King of Prussia, Pennsylvania (73,102C); and Customer Warranty, Emerging Business, Supply Chain, Volume Operations, Worldwide Sales, and Americas Region Organizations, at the following locations: Anaheim, Cupertino, Oxnard, Palo Alto, Roseville, San Diego, and Sunnyvale, California, and teleworkers across California (TA–W–73,102); Colorado Springs and Fort Collins, Colorado, and teleworkers across Colorado (TA–W–73,102A); Austin, Houston, and Richardson, Texas, and teleworkers across Texas (TA–W–73,102B); King of Prussia and Philadelphia, Pennsylvania, and teleworkers across Pennsylvania (TA–W–73,102C); teleworkers across Alabama (TA–W–73,102D); Conway, Arkansas (TA–W–73,102E); teleworkers across Arizona (TA–W–73,102F); Nashua, Connecticut, and teleworkers across Connecticut (TA–W–73,102G); Miami, Florida, and teleworkers across Florida (TA–W–73,102H); Alpharetta and Atlanta, Georgia, and teleworkers across Georgia (TA–W–73,102I); Des Moines, Iowa (TA–W–73,102J); Boise, Idaho (TA–W–73,102K); Downers Grove, Illinois, and teleworkers across Illinois (TA–W–73,102L); Carmel, Indianapolis, and Plainfield, Indiana, and teleworkers across Indiana (TA–W–73,102M); teleworkers across Kansas (TA–W–73,102N); teleworkers across Kentucky (TA–W–73,102O); Andover, Marlborough, Nashua, and Westborough, Massachusetts, and teleworkers across Massachusetts (TA–W–73,102P); Bethesda, Maryland, and teleworkers across Maryland (TA–W–73,102Q); Farmington Hills, Michigan, and teleworkers across Michigan (TA–W–73,102R); Minneapolis, Minnesota, and teleworkers across Minnesota (TA–W–73,102S); teleworkers across Missouri (TA–W–73,102T); Greensboro, North Carolina, and teleworkers across North Carolina (TA–W–73,102U); Omaha, Nebraska (TA–W–73,102V); Marlborough and Nashua, New Hampshire, and teleworkers across New Hampshire (TA–W–73,102W); teleworkers across New Jersey (TA–W–73,102X); Rio Rancho, New Mexico (TA–W–73,102Y); Syracuse, New York and teleworkers across New York (TA–W–73,102Z); teleworkers across Ohio (TA–W–73,102AA); teleworkers across Oklahoma (TA–W–73,102BB); teleworkers across Oregon (TA–W–73,102CC); teleworkers across Tennessee (TA–W–73,102DD); teleworkers across Utah (TA–W–73,102EE); Richmond, Virginia, and teleworkers across Virginia (TA–W–73,102FF); teleworkers across Vermont (TA–W–73,102GG); Bellevue and Vancouver, Washington, and teleworkers across Washington (TA–W–73,102HH); Greenville, Wisconsin, and teleworkers across Wisconsin (TA–W–73,102II), who became totally or partially separated from employment on or after December 9, 2008 through March 2, 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 in Washington, DC, this 10th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33051 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,610; TA–W–74,610A]

Ocwen Loan Servicing, LLC; Including Workers Whose Wages Were Reported Under HomEQ Servicing; North Highlands, CA; Ocwen Loan Servicing, LLC; Including Workers Whose Wages Were Reported Under HomEQ Servicing; Raleigh, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 2010, applicable to workers of Ocwen Loan Servicing, LLC, including workers whose wages were reported under HomEQ Servicing, North Highland, California. The notice was published in the **Federal Register** on December 8, 2010 (75 FR 76488).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers supply loan servicing.

The Raleigh, North Carolina location operated in conjunction with the North Highland, California location. Both locations were part of the overall servicing operation and served the same customer base of mortgage loans, and were affected by the subject firm shifting loan services to a foreign country.

Accordingly, the Department is amending the certification to include workers of the Raleigh, North Carolina location of Ocwen Loan Servicing, LLC, including workers whose wages were reported under HomEQ Servicing.

The amended notice applicable to TA–W–74,610 is hereby issued as follows:

All workers of Ocwen Loan Servicing, LLC, including workers whose wages were reported under HomEQ Servicing, North Highland, California (TA–W–74,610), and Ocwen Loan Servicing, LLC, including workers whose wages were reported under HomEQ Servicing, Raleigh, North Carolina (TA–W–74,610A), who became totally or partially separated from employment on or after September 7, 2009, through November 23, 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 in Washington, DC, this 17th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33054 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–72,319

General Motors Company, Formerly Known as General Motors Corporation, Willow Run Transmission Plant, Including On-Site Leased Workers From Aerotek, Securitas, Knight Management, PLMSI, Acro, and Quaker Chemical, Ypsilanti, MI; 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 July 7, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant, Ypsilanti, Michigan. The notice was published in the **Federal Register** on July 26, 2010. (75 FR 43558). The notice was amended on July 30, 2010 and November 18, 2010 to include on-site leased workers from Aerotek, Securitas, Knight Management, PLMSI and Acro. The notices were published in the **Federal Register** on August 13, 2010 (75 FR 49527) and December 7, 2010 (75 FR 76038), respectively.

At the request of the State, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of automotive transmissions and transmission components.

The company reports that workers leased from Quaker Chemical were employed on-site at the Ypsilanti, Michigan location of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant. The Department has determined that on-site workers from Quaker Chemical were sufficiently under the control of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Quaker Chemical working on-site at the Ypsilanti, Michigan location of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant.

The amended notice applicable to TA–W–72,319 is hereby issued as follows:

All workers General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant, including on-site leased workers from Aerotek, Securitas, Knight Management, PLMSI, Acro and Quaker Chemical, Ypsilanti, Michigan, who became totally or partially separated from employment on or after September 14, 2008, through July 7, 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 17th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33050 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–71,374

GMPT Warren Transmission, GM Powertrain Division, a Subsidiary of General Motors Company Including On-Site Leased Workers From Knight Facilities Management, Warren, MI; 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 April 14, 2010, applicable to workers of GMPT Warren Transmission, GM Powertrain Division, a subsidiary of General Motors Company, Warren, Michigan. The Department's notice was published in the **Federal Register** on May 20, 2010 (75 FR 28300). Workers are engaged in the production of automotive transmissions.

At the request of the United Automobile, Aerospace & Agriculture Implement Workers of America (UAW), Local 909, the Department reviewed the certification.

The company reports that workers leased from Knight Facilities Management were employed on-site at the Warren, Michigan location of the subject firm. The Department has determined that these workers were sufficiently under the control of GMPT Warren Transmission, GM Powertrain Division, a subsidiary of General Motors Company, to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Knight Facilities Management working on-site at the Warren, Michigan location of GMPT Warren Transmission, GM Powertrain Division, a subsidiary of General Motors Company.

The amended notice applicable to TA–W–71,374 is hereby issued as follows:

All workers of GMPT Warren Transmission, GM Powertrain Division, a subsidiary of General Motors Company, including on-site leased workers from Knight Facilities Management, Warren, Michigan, who became totally or partially separated from employment on or after June 16, 2008, through April 14, 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 14th day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33049 Filed 12–30–10; 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 6, 2010 through December 10, 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 number	Subject firm	Location	Impact date
74,125	Bentley Arbuckle, Inc.	Dallas, TX	May 14, 2009.
74,159	TPUSA, Inc., Teleperformance USA, Inc.	Grindstone, PA	May 28, 2009.
74,210	Crossville, Inc., DBA Peltier Glass Company	Ottawa, IL	June 3, 2009.
74,434	Williams International Company, LLC, Leased Workers from Five Star Technical, Neu Tech Associates.	Commerce Township, MI	July 16, 2009.
74,624	Chart Industries, Inc., Biomedical Division	Denver, CO	September 10, 2009.
74,759	Del Monte Foods, Plant District Center; Leased Workers Securitas Security Services, etc..	Terminal Island, CA	September 27, 2009.
74,941	Georgia Pacific, LLC, Alpha Plastics Division	Hamlet, NC	November 24, 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 number	Subject firm	Location	Impact date
73,692	Dell, Inc., Perot Systems; Client Control Center	Plano, TX	February 27, 2010.
74,555	White Pine Copper Refinery, Hudson Bay Mining and Smelting Co., Limited.	White Pine, MI	August 6, 2009.
74,607	WellPoint, Inc., The WellPoint Companies, Blue Cross of CA, Leased Workers from Bender, etc.	Camarillo, CA	September 7, 2009.
74,607A	WellPoint, Inc., The WellPoint Companies, Blue Cross of CA, Leased Workers from Bender, etc.	Newbury Park, CA	September 7, 2009.
74,607B	WellPoint, Inc., The WellPoint Companies, Blue Cross of CA, Leased Workers from Bender, etc.	Thousand Oaks, CA	September 7, 2009.
74,714	Quest Diagnostics, Inc., Informational Technology Help Desk Services.	West Norristown, PA	October 3, 2009.
74,762	CR Compressors, LLC, Division of Emerson Climate Technologies, Leased Workers from Regal.	Hartselle, AL	October 1, 2009.
74,778	CEVA Freight, LLC, Leased Workers from Accountants International, Accountemps, etc.	Houston, TX	October 21, 2009.
74,800	Toyo Seal America Corporation	Mooresville, NC	October 27, 2009.
74,827	Orthodyne Electronics, Business Unit of Kulicke and Soffa, Leased Workers Aerotek, Insight, etc.	Irvine, CA	November 1, 2009.
74,845	J.P. International Tool, Inc., Leased Workers from EGW Associates, Inc.	Alden, NY	November 4, 2009.
74,886	Winchester Electronics Corporation	Franklin, MA	July 2, 2010.
74,886A	Leased Workers from Majestic Staffing, Staffmark, and Davis Company, Working On-Site at Winchester Electronics Corporation.	Franklin, MA	November 16, 2009.
74,887	Winchester Electronics Corporation	Rock Hill, SC	July 2, 2010.
74,891	PricewaterhouseCoopers, LLP, Internal Firm Services Division; Word Processor Employees.	Boston, MA	November 10, 2009.
74,946	Russound/FMP, Inc., Leased Workers Accountemps, National Employment Services Corporation, etc.	Newmarket, NH	November 16, 2009.
74,947	Eastman Kodak Company, Document Imaging-Kodak Wheeling Division; Leased Workers Adecco Staffing, etc.	Wheeling, IL	November 10, 2009.
74,948	Robin Manufacturing USA, Inc.	Hudson, WI	July 19, 2010.
74,951	STATS ChipPAC Unlimited (SCU)	Milpitas, CA	November 11, 2009.
74,953	V.I. Prewett & Son, Inc., Gildan Activewear, Leased Workers Stellar Staffing & First Choice Staffing.	Fort Payne, AL	December 31, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
74,694	IAC Greencastle, LLC	Greencastle, IN	October 5, 2009.
74,774	Charter Manufacturing Company, Inc., Charter Automotive Division, Leased Workers from QTI.	Milwaukee, WI	October 21, 2009.
74,828	Midwest Transatlantic Lines, Inc.	Berea, OH	November 2, 2009.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
74,757	E.A. Quirin Machine Shop, Inc.	Saint Clair, PA	October 18, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W number	Subject firm	Location	Impact date
74,925	Commercial Furniture Group, Inc., Merchandise Mart.	Chicago, IL	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
73,896	Victory Industrial Products LLC	Batavia, OH	
73,897	Ebix, Inc., Ebix Customer Relations Management Division, Formerly E–Z- Data, Inc.	Lynchburg, VA	
74,640	Citigroup Management Corporation, CitiCorp, Inc.	Irving, TX	
74,700	AT&T	Reynoldsburg, OH	
74,732	Andy Sims Buick	Broadview Heights, OH	
74,742	Norske Skog (USA) Inc.	Southport, CT	

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 number	Subject firm	Location	Impact date
74,579	Henry River Manufacturing	Hildebran, NC	
74,632	Valspar Corporation	High Point, NC	
74,632A	Valspar Corporation	Montebello, CA	
74,632B	Valspar Corporation	Orangeburg, SC	
74,632C	Valspar Corporation	Seattle, WA	
74,844	Cooper Lighting	Americus, GA	
74,883	Pitney Bowes	Shelton, CT	
74,896	Triangle Suspension Systems, Inc., Marmon Highway Technologies/Berkshire Hathaway; Triangle Springs Division.	DuBois, PA	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W number	Subject firm	Location	Impact date
74,937	Hachette Book Group	Boston, MA	

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 number	Subject firm	Location	Impact date
74,753	Hewlett Packard Company, Personal Systems Group.	Roseville, CA	
74,917	Hewlett Packard Company, Personal Systems Group, Teleworkers Across 36 States and Headquartered in TX.	Cupertino, CA	

I hereby certify that the aforementioned determinations were issued during the period of *December 6, 2010 through December 10, 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 15, 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–33046 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 13, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 13, 2011.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 17th of December 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

Appendix

TAA PETITIONS INSTITUTED BETWEEN 12/6/10 AND 12/10/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74960	Caraustar Custom Packaging Group (State/One-Stop).	Versailles, CT	12/06/10	12/03/10
74961	Pfizer (Company)	Chazy, NY	12/06/10	12/02/10
74962	RR Donnelley (Company)	Willard, OH	12/06/10	12/03/10
74963	Nabro Able, LLC (Workers)	Scottsdale, AZ	12/07/10	12/06/10
74964	RR Donnelley (Company)	Crawfordsville, IN	12/07/10	12/01/10
74965	Ross Sand Casting Industries, LLC (Union)	Orrville, OH	12/07/10	12/04/10
74966	Jerr-Dan Corporation (Workers)	Greencastle, PA	12/07/10	11/29/10
74967	Philips Lighting Company (Union)	Danville, KY	12/07/10	12/05/10
74968	Brady Corporation (State/One-Stop)	Brooklyn Park, MN	12/08/10	12/06/10
74969	Bosch Communication Systems (State)	Glencoe, MN	12/08/10	12/06/10
74970	The Wise Company, Inc. (Workers)	Pigott, AR	12/08/10	12/07/10
74971	Seton Company (Company)	Saxton, PA	12/08/10	12/06/10
74972	CEVA Logistics, U.S., Inc. (State/One-Stop)	Jacksonville, FL	12/08/10	12/06/10
74973	Wearbest Sil-Tex Mills, Ltd. (Company)	New York, NY	12/09/10	12/08/10
74974	TI Automotive (Company)	Chesterfield, MI	12/09/10	12/05/10
74975	Digital River Education Services, Inc. (Company).	Austin, TX	12/09/10	12/07/10
74976	Armstrong World Ind. (Union)	Beaver Falls, PA	12/09/10	12/07/10
74977	Wearbest Sil-Tex Mills, Ltd. (Company)	Garfield, NJ	12/09/10	12/08/10
74978	Western Union Financial (Company)	St. Charles, MO	12/10/10	12/10/10
74979	City of Walla Walla (Workers)	Walla Walla, WA	12/10/10	12/08/10
74980	Industrial Wire Products (Workers)	Sullivan, MO	12/10/10	12/08/10
74981	Ideal Manufacturing Solutions (Workers)	Franklin, WI	12/10/10	12/07/10
74982	vCustomer Corporation (State/One-Stop)	Spokane, WA	12/10/10	11/30/10

[FR Doc. 2010–33045 Filed 12–30–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–172)]

NASA Advisory Council; Aeronautics 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 Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting from the aeronautics community and other persons research and technical information relevant to program planning.

DATES: Thursday, January 20, 2011, 9 a.m. to 4:30 p.m., Local Time; Friday, January 21, 2011, 8 a.m. to 11 a.m., Local Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, Room 6B42, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for

the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by Webex and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the Web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Aeronautics Budget Overview.
- Systems Analysis and Strategic Planning.
- Agency/Aeronautics Research Mission Directorate (ARMD) Workforce Planning.
- Aviation environmental research and regulatory environment.
- Aeronautics Committee 2011 Planning.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. U.S. citizens will need to show valid, officially-issued picture identification such as 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 Aeronautics Committee meeting in conference room 6B42 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), Permanent Resident Alien card number and expiration date (if applicable), and place and date of entry into the U.S., to Susan Minor, NASA Advisory Council Aeronautics Committee Executive Secretary, FAX 202–358–3602, by no less than 8 working days prior to the meeting. Non-U.S. citizens will need to show their Passport or Permanent Resident Alien card to enter the NASA Headquarters building. For questions, please call Susan Minor at (202) 358–0566.

Dated: December 22, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–33059 Filed 12–30–10; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the anti-roll tank control system that will be used in the Alaska Region Research Vessel (ARRV). An anti-roll tank is a system that is built into a vessel's hull to reduce rolling motion when operating at sea.

DATES: January 3, 2011.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Leithead, Division of Acquisition and Cooperative Support, 703–292–4595.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on October 22, 2010, the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the anti-roll tank control system that will be used in the ARRV. The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that a "passive-controlled" anti-roll tank control system of satisfactory quality is not produced in the United States in sufficient and reasonably available commercial quantities. The cost of the anti-roll tank control system (~$130,000) represents less than 0.1% of the total $148 million Recovery Act award provided toward construction of the ARRV.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ARRV is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act "may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

The ARRV has been developed under a cooperative agreement awarded to the University of Alaska, Fairbanks (UAF) that began in 2007. UAF executed the shipyard contract in December 2009 and the project is proceeding toward construction. The purpose of the Recovery Act is to stimulate economic recovery in part by funding current construction projects like the ARRV that are "shovel ready" without requiring projects to revise their standards and specifications, or to restart the bidding process again.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Finding That Relevant Goods Are Not Produced in the United States in Sufficient and Reasonably Available Quality

Installation of an anti-roll tank system is included in the construction specifications to improve the ARRV's response to roll motion. Anti-roll tanks are a relatively simple and efficient way to improve the comfort and safety of personnel sailing aboard the ship. They consist of a tank filled with fluid (usually seawater) that is designed to slow the rate of water transfer from one side of the vessel to the other, trapping the larger amount of water on the higher side of the vessel. The water is trapped

by either a series of baffles (internal vertical plates), air pressure across the top of the tank, or machinery (*i.e.* a pump). There are generally two types of systems, "passive" and "active" depending on the mechanism used to trap the water. "Active" generally refers to systems that use machinery such as pumps. These can be complex and require higher amounts of electrical power to operate. "Passive" systems generally use baffles and require no power or other control systems. Between the two is "passive-controlled" which uses cross-over vent pipes fitted with valves that control the flow of air across the top of the tank. The air pressure at the top slows the transfer of water at the bottom.

The ARRV will operate as a global class ship within the U.S. academic research vessel fleet. As such, it is expected to deploy worldwide where it will encounter a wide variety of sea conditions. Over the vessel's service life, the ARRV is likely to be deployed to Arctic and Antarctic waters, the north Pacific and north Atlantic where the average wave lengths and heights can be extreme as well as vary dramatically. Vessels working in these high latitudes are subject to demanding and often dangerous conditions due to low temperatures, high winds, and rough seas.

The addition of the anti-roll tank was a high priority recommendation from the Final Design Review (FDR) held in October 2008. The review panel recognized the need for the vessel to periodically work well beyond the Arctic waters that the hull was initially optimized for. At that time, the design of the ARRV was fairly well advanced. Besides the addition of hull length to incorporate the tank structure itself, the type of anti-roll tank specified must meet the following technical requirements based on the status of the project:

- Ability to minimize ship's roll response in a wide variety of sea states (either "Active" or "Passive-controlled").
- Minimize impact on construction cost (low complexity, low additional power).
- Minimize operating cost (low complexity).

Failure to meet any of these technical requirements would have severe negative consequences for the project with regard to nonperformance and significant added program cost. It would also result in a vessel that could not successfully support open water science equipment deployments over the anticipated operating range which includes the high polar regions (north and south), as well as the Gulf of Alaska, the north Pacific and the north Atlantic. The average wave lengths and heights encountered in these areas are widely different which means the vessel motions produced will be widely different.

Following FDR, the project conducted a detailed anti-roll tank study to assess alternatives. A passive-controlled anti-roll tank system was determined to be the best option over a simpler passive system because of its ability to be "tuned" to a wide variety of sea conditions. Since the ARRV will operate as a global-ranging vessel with an emphasis on the high latitudes, an anti-roll tank that can respond to the widely varying sea states encountered is essential. Otherwise, vessel motions will not be adequately reduced to permit safe and effective science operations. All global research vessels are fitted with similar anti-roll tanks. In addition, the system has low power requirements and compared to a fully "active" system has a minimal design impact. In short, the passive-controlled system provides the best performance for the least impact on the existing design.

Reducing the vessel's roll response decreases the number of days per year that the ship would have to halt science operations because of excessive ship's motion. At a certain point, the vessel motions become severe enough that the crew and science party are no longer effective due to seasickness or fatigue. Once this occurs, the ability to complete the science mission goes down dramatically either causing cancellation of science objectives or extension of the mission to fully complete the objectives. The chance of injuring personnel and/or damaging equipment also goes up dramatically. The daily rate for the ARRV is estimated at $45,000 per day in 2014 dollars. Given that the vessel will operate mainly in the high latitudes, losing 10% of the ship's schedule (30 days) annually due to weather would be likely if a technically compliant anti-roll tank were not fitted in the vessel. In as little as two years the lost science time to the agency could easily exceed the entire cost of the anti-roll tank addition (~$2.2 million).

For the purposes of this exemption request, the "anti-roll tank system" includes only the manufactured goods that make up the control portion of the system; namely the control panel, control valves, safety valves, air filters, switches, accumulators, sensors, and spare parts. This request does not include the fabrication of the tanks and cross-over piping which are part of the ship structure being fabricated by the shipyard (~$2.0 million) all of which will be U.S. steel and U.S. manufacture.

The market research for this exemption was done by the shipyard in the summer of 2010 and verified by the UAF project team in September 2010. As noted in UAF's request for this exemption, the shipyard performed market research by reviewing industry publications and the Internet in order to assess whether there exists a domestic capability to provide an anti-roll tank system that meets the necessary requirements for safe and successful operation in high latitudes and multiple ocean environments. Only three (3) potential suppliers were identified; two (2) were foreign-owned and the third was domestic. The shipyard compared the existing product lines for compliance with the anti-roll tank technical specifications and requirements as identified above. Following a presentation at the shipyard, it was determined that the one domestic supplier did not provide a system with the required passive-controlled capability. They supplied only a passive system which cannot be tuned to various sea conditions. Furthermore, although domestically-owned it was determined that the system from the single domestic supplier was not actually manufactured domestically. The result of the shipyard's independent market research is consistent with a determination made by the project team in early 2009 when conducting the anti-roll tank study.

The project's conclusion is there are no US manufacturers who produce a suitable anti-roll system that meets all of the ARRV requirements so an exemption to the Buy American requirements is necessary.

In the absence of a domestic supplier that could provide a requirements-compliant anti-roll tank system, UAF requested that NSF issue a Section 1605 exemption determination with respect to the purchase of a foreign-supplied, requirements-compliant anti-roll tank system, so that the vessel will meet the specific design and technical requirements which, as explained above, are necessary for this vessel to be able to perform its mission safely and successfully. Furthermore, the shipyard's market research as verified by UAF indicated that an anti-roll tank system compliant with the ARRV's technical specifications and requirements is commercially available from foreign vendors within their standard product lines.

NSF's Division of Acquisition and Cooperative Support (DACS) and other NSF program staff reviewed the UAF exemption request submittal, found that

it was complete, and determined that sufficient technical information was provided in order for NSF to evaluate the exemption request and to conclude that an exemption is needed and should be granted.

III. Exemption

On October 22, 2010, based on the finding that no domestically produced anti-roll tank system met all of the ARRV's technical specifications and requirements and pursuant to section 1605(b), the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of the Recovery Act's Buy American requirements with respect to the procurement of a passive-controlled anti-roll tank control system.

Dated: December 23, 2010.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2010–33043 Filed 12–30–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the weather facsimile machine that will be used in the Alaska Region Research Vessel (ARRV). A weather facsimile (weather fax) is an electronic machine designed to automatically receive near-real time marine weather information.

DATES: January 3, 2011.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Leithead, Division of Acquisition and Cooperative Support, 703–292–4595.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on October 22, 2010, the NSF Chief Financial Officer (CFO), in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the weather fax that will be used in the ARRV. The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that weather faxes of satisfactory quality are not produced in the United States in sufficient and reasonably available commercial quantities. The cost of the weather fax is approximately $11,000, which represents less than .01% of the value of the total $148 million Recovery Act award provided toward construction of the ARRV.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ARRV is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act "may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

The ARRV has been developed under a cooperative agreement awarded to the University of Alaska, Fairbanks (UAF) that began in 2007. Shipyard selection is complete and UAF executed the construction contract in December 2009. The purpose of the Recovery Act is to stimulate economic recovery in part by funding current construction projects like the ARRV that are "shovel ready" without requiring projects to revise their standards and specifications, or to restart the bidding process again.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Finding That Relevant Goods Are Not Produced In the United States In Sufficient and Reasonably Available Quality

The requirement for a weather fax was part of the construction specifications for the ARRV. A weather fax provides valuable, near-real time weather information to the ship as an aid for planning science operations and transit voyages. It is a standard piece of electronic bridge equipment throughout the world as it provides the ship operator with an excellent and necessary forecasting tool to assess weather impact on operations. The specification requirements for the weather fax include:

1. Performance, reliability, maintainability, durability, size, and weight.
2. Regulatory body approval.
3. Availability of spare parts.
4. Operate within the 2 MHz to 25 MHz range.
5. Built-in receiver.
6. Built-in thermal printer.
7. Human Machine Interface that allows the operator easy access for system set-up.
8. Pre-programmed with 150 channels for the existing facsimile stations world-wide and allow manual programming by the operator.
9. Internal back-up battery.
10. Automatic start/stop recording and printing.

An important feature operationally is being a stand-alone unit with a built in printer and automatic operation. This provides the bridge watch with a hard copy of weather charts and weather satellite images in the pilothouse without having to access a computer or keep track of when a facsimile station is scheduled to transmit. The automatic operation is critical to minimize distractions to the bridge watch who can then retrieve the hard copy for analysis at a time that will not impact navigational duties. Science and routine vessel operational duties are demanding, especially in the high latitudes where the ARRV will operate. Any unnecessary distractions in the pilothouse can jeopardize the safety of the vessel.

The ARRV will operate as a Global class ship within the U.S. academic research vessel fleet. As such, it is expected to deploy worldwide where it is likely to encounter highly variable weather conditions. Over the vessel's service life, the ARRV is likely to be deployed to Arctic and Antarctic waters, the north Pacific and north Atlantic

where the weather conditions change rapidly and dramatically. Vessels working in these high latitudes are subject to demanding and often dangerous conditions due to low temperatures, high winds, and rough seas. Failure to meet any of the technical requirements would have severe negative consequences for the project with regard to operational safety.

The market research for this exemption was done by the shipyard in the summer of 2010 and verified by the UAF project team in July 2010. As noted in UAF's request for this exemption, the shipyard performed market research by reviewing industry publications, the Internet (including the Marine Electronics Journal Web site) and contacting various electronic supply companies in order to assess whether there exists a domestic capability to provide a weather fax that meets the necessary requirements for safe and successful operation world-wide. Eighteen (18) potential vendors were identified with only six (6) manufacturing a weather fax. Of the six, only one (1) was a U.S. manufacturer. The shipyard then compared the existing product lines for compliance with the weather fax technical specifications and requirements as identified above. It was found that the one U.S. manufacturer did not make a unit that was stand-alone. Instead, the system uses a personal computer to provide both the human interface and printing capability of the weather charts. This requires the bridge watch to actively manage and interface with the system, which takes their attention from other navigational and operational duties. This distraction increases the likelihood of collision, grounding, failure to adequately monitor over-the-side science operations, and inadvertently sailing into dangerous weather conditions. Because of this, all modern ocean-going vessels have at least one stand-alone weather fax system.

The project's conclusion is there are no U.S. manufacturers who produce a suitable weather fax unit that meets all of the ARRV requirements so an exemption to the Buy American requirements is necessary.

In the absence of a domestic supplier that could provide a requirements-compliant weather fax, UAF requested that NSF issue a Section 1605 exemption determination with respect to the purchase of a foreign-supplied, requirements-compliant weather fax, so that the vessel will meet the specific design and technical requirements which, as explained above, are necessary for this vessel to be able to perform its mission safely and successfully. Furthermore, the shipyard's market research as verified by UAF indicated that a weather fax compliant with the ARRV's technical specifications and requirements is commercially available from foreign vendors within their standard product lines.

NSF's Division of Acquisition and Cooperative Support (DACS) and other NSF program staff reviewed the UAF exemption request submittal, found that it was complete, and determined that sufficient technical information was provided in order for NSF to evaluate the exemption request and to conclude that an exemption is needed and should be granted.

III. Exemption

On October 22, 2010, based on the finding that no domestically produced weather fax met all of the ARRV's technical specifications and requirements and pursuant to section 1605(b), the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of the Recovery Act's Buy American requirements with respect to the procurement of the marine weather fax.

Dated: December 23, 2010.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2010–33044 Filed 12–30–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Programmatic Environmental Assessment and Final Finding of No Significant Impact for Exemptions From the Implementation Deadline for New Security Requirements

The U.S. Nuclear Regulatory Commission (NRC) has received and expects to receive exemption requests from several nuclear power reactor licensees. Each expected exemption request will be from the implementation date requirement of Title 10 of the Code of Federal Regulations (10 CFR) 73.55. The NRC is authorized to issue exemptions pursuant to 10 CFR 73.5. In accordance with 10 CFR 51.21, the NRC has performed a programmatic environmental assessment of these exemption requests. The NRC concluded that the proposed action constitutes administrative (timing) changes that would not impact the environmental resources near any specified nuclear power plant. Based upon the results of this programmatic environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action may include issuing exemptions to nuclear power plant licensees for up to 40 nuclear power plant sites, all of which have already been granted plant-specific exemptions granting additional time to implement some of the new requirements of 10 CFR 73.55. These sites are:

Arkansas Nuclear One, Units 1 and 2
Beaver Valley Power Station, Unit Nos. 1 and 2
Browns Ferry Nuclear Plant, Units 1, 2, and 3
Brunswick Steam Electric Station, Units 1 and 2
Columbia Generating Station
Cooper Nuclear Station
Crystal River Unit 3 Nuclear Generating Plant
Davis-Besse Nuclear Power Station, Unit No. 1
Diablo Canyon Power Plant, Unit Nos. 1 and 2
Edwin I. Hatch Nuclear Plant, Units 1 and 2
Fermi 2
Fort Calhoun Station, Unit 1
Grand Gulf Nuclear Station, Unit 1
H. B. Robinson Steam Electric Plant, Unit No. 2
Hope Creek Generating Station, Unit Nos. 1 and 2
Indian Point Nuclear Generating Unit Nos. 1, 2 and 3
James A. Fitzpatrick Nuclear Power Plant
Joseph M. Farley Nuclear Plant, Units 1 and 2
Millstone Power Station, Unit Nos. 1, 2, and 3
Monticello Nuclear Generating Plant
North Anna Power Station, Unit Nos. 1 and 2
Palisades Nuclear Plant
Palo Verde Nuclear Generating Station, Units 1, 2, and 3
Perry Nuclear Power Plant, Unit No. 1
Pilgrim Nuclear Power Station
Point Beach Nuclear Plant, Units 1 and 2
Prairie Island Nuclear Generating Plant, Units 1 and 2
Salem Nuclear Generating Station, Unit Nos. 1 and 2
San Onofre Nuclear Generating Station, Units 2 and 3
Seabrook Station, Unit No. 1
Sequoyah Nuclear Plant, Units 1 and 2
Shearon Harris Nuclear Power Plant, Unit 1
South Texas Project, Units 1 and 2
Surry Power Station, Unit Nos. 1 and 2
Susquehanna Steam Electric Station, Units 1 and 2
Vermont Yankee Nuclear Power Station
Virgil C. Summer Nuclear Station, Unit No. 1
Vogtle Electric Generating Plant, Units 1 and 2
Waterford Steam Electric Station, Unit 3
Watts Bar Nuclear Plant, Units 1 and 2

Wolf Creek Generating Station

Specifically, the licensees for each of these plants may propose an additional alternate date for full compliance beyond the March 31, 2010 date required by 10 CFR 73.55(a)(1), and if approved by the NRC, would be granted a plant-specific exemption. The proposed action, an exemption extending the schedule for completion of actions required by the revised 10 CFR 73.55, would not involve any physical changes to the reactor(s), fuel, plant structures, support structures, land, or water at each nuclear power plant site. If granted, a plant-specific safety evaluation will be included in the letter to the licensee approving the exemption from the regulation.

The Need for the Proposed Action

The proposed action is needed to continue to exempt up to 40 nuclear power plant sites from being in full compliance with new requirements contained in 10 CFR 73.55. The original implementation date was March 31, 2010 and previous exemptions were granted to several licensees from meeting that date. Another round of exemptions is needed to provide these licensees with additional time to comply with the rule requirements. While licensees completed much of the work required by the 10 CFR 73.55 rule change at their plants by the March 31, 2010 implementation date, affected licensees require additional time to complete all newly required modifications.

Environmental Impacts of the Proposed Action

The NRC regulation, 10 CFR 73.55, requires NRC nuclear power plant licensees to implement various physical protection requirements to prevent radiological sabotage. The NRC has completed its environmental assessment of the proposed action, and has concluded that, should NRC decide to grant a 10 CFR 73.55 compliance date exemption to these plants, extending the implementation deadline would not significantly affect plant safety and would not significantly affect the probability of an accident.

The proposed action would not increase the radiological hazard beyond what was analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR 73.55 as discussed in the **Federal Register** notice dated March 27, 2009 (74 FR 13926). There would be no change to radioactive effluents and emissions that would increase radiation exposures to plant workers and members of the public. Therefore, no radiological impacts are expected as a result of the proposed action.

In addition, there will be no construction or major renovation of any buildings or structures, nor any ground disturbing activities associated with an extension of the compliance deadline. Licensees would not increase or decrease their workforce, nor is traffic to or around any of the subject power plants expected to increase, as a result of an extension of the compliance deadline. Therefore, providing licensees with additional time to comply with the revised requirements of 10 CFR 73.55 would not alter land use, air quality, and water use (quality and quantity) conditions or National Pollutant Discharge Elimination System permits at each of the nuclear power plants that may be the subject of an exemption request. Aquatic and terrestrial habitat in the vicinity of each power plant; threatened, endangered, and protected species under the Endangered Species Act; and essential fish habitat covered by the Magnuson-Stevens Act would not be affected. In addition, historic and cultural resources, socioeconomic conditions, and minority and low-income populations in the vicinity of each power plant would also not be affected by this action.

As previously noted, in promulgating its amendments to 10 CFR part 73, the Commission prepared an environmental assessment of the rule change and published a finding of no significant impact (10 CFR parts 50, 52, 72, and 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)). Thus, through the proposed action, the Commission would be granting additional time for the licensees to comply with regulatory requirements for which the Commission has already found no significant impact.

For the foregoing reasons, the NRC concludes that there would be no significant radiological or non-radiological environmental impacts associated with the extension of the implementation date of the new requirements of 10 CFR 73.55.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed actions (*i.e.,* the "no-action" alternative). Denial of the exemption requests would result in no change in current environmental conditions at each of the nuclear power plants.

Denial of the exemption requests would result in the licensees being in non-compliance with 10 CFR 73.55(a)(1) and thus, subject to NRC enforcement action. The end result, however, would still be ultimate licensee compliance with the requirements of 10 CFR 73.55, but with the added expense to both the NRC and the licensees of any enforcement actions. The NRC concludes that the environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The proposed action does not involve the use of any different resources than those considered in the final environmental statements for the granting of the operating licenses for these nuclear power plants and for those plants that have had their licenses renewed, in NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," published in May 1996, and its supplements published from 1999 to the present.

Finding of No Significant Impact

On the basis of the above environmental assessment, which in accordance with 10 CFR 51.32(a)(4), is incorporated into this finding of no significant impact by reference, the NRC concludes that the proposed action constitutes an administrative change (timing) that would not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further details with respect to the proposed action will be available as individual licensees request exemptions. Portions of these requests may contain proprietary and safeguards information and, accordingly, will not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of December 2010.

For the Nuclear Regulatory Commission.

Robert J. Pascarelli,

Chief, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–33073 Filed 12–30–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0265]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 3.71, Revision 2, "Nuclear Criticality Safety Standards for Fuels and Material Facilities."

FOR FURTHER INFORMATION CONTACT: Tamara D. Powell, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3211 or e-mail: *Tamara.Powell@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 3.71, entitled, "Nuclear Criticality Safety Standards for Fuels and Material Facilities," was issued with a temporary identification as Draft Regulatory Guide, DG–3030. Regulatory Guide 3.71 provides applicants, licensees, and certificate holders with updated guidance concerning criticality safety standards that the NRC has endorsed for use with nuclear fuels and material facilities. As such, Regulatory Guide 3.71 describes methods that the NRC staff considers acceptable for complying with the NRC's regulations in Title 10, of the Code of Federal Regulations, parts 70, "Domestic Licensing of Special Nuclear Material," and 76, "Certification of Gaseous Diffusion Plants" (10 CFR parts 70 and 76).

The NRC staff has revised Regulatory Guide 3.71 to provide guidance on complying with these portions of the NRC's regulations. This guide describes procedures for preventing nuclear criticality accidents in operations that involve handling, processing, storing, and/or transporting special nuclear material at fuel and material facilities. It also endorses specific nuclear criticality safety standards developed by the American Nuclear Society's Standards Subcommittee 8 (ANS–8), "Operations with Fissionable Materials Outside Reactors." Regulatory Guide 3.71 is not intended for use by nuclear reactor licensees.

II. Further Information

In July 2010, DG–3030 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on September 29, 2010. The staff's responses to the public comments received are located in the NRC's Agencywide Documents Access and Management System under Accession Number ML103210349. Electronic copies of Regulatory guide 3.71, Revision 2 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F 21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone: 301–415–4737 or 800–397–4209, by fax: 301–415–3548, and by e-mail: *pdr@nrc.gov*.

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

Dated at Rockville, Maryland this 23rd day of December 2010.

For the Nuclear Regulatory Commission.

John N. Ridgely,

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

[FR Doc. 2010–33072 Filed 12–30–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0444]

Notice of Availability of the Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–513, Revision 3, "Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation"

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: As part of the consolidated line item improvement process (CLIIP), the NRC is announcing the availability of the model application (with model no significant hazards consideration determination) and model safety evaluation (SE) for the plant-specific adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–513, Revision 3, "Revise PWR [pressurized water reactor] Operability Requirements and Actions for RCS [reactor coolant system] Leakage Instrumentation." TSTF–513, Revision 3, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML102360355. The proposed changes would revise the Standard Technical Specifications (STS) to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. Changes to the Technical Specifications (TS) Bases are included, which reflect the proposed changes and more accurately reflect the contents of the facility design bases related to the operability of the RCS leakage detection instrumentation. The CLIIP model SE will facilitate expedited approval of plant-specific adoption of TSTF–513, Revision 3.

Documents: You can access publicly available documents related to this notice using the following methods:

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of

NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*.

The model application (with model no significant hazards consideration determination) and model SE for the plant-specific adoption of TSTF–513, Revision 3, are available electronically under ADAMS Accession Number ML101340271. The NRC staff disposition of comments received on the Notice of Opportunity for Comment announced in the **Federal Register** on October 9, 2009 (74 FR 52268–52274) and non-concurrence, are available electronically under ADAMS Accession Numbers ML101340278 and ML103480005.

Federal Rulemaking Web site: The public comments received and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0444.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Hamm, Reactor Systems Engineer, Technical Specifications Branch, Mail Stop: O–7C2A, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1472 or e-mail: *Matthew.Hamm@nrc.gov* or Mrs. Michelle Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop O–12D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1774 or e-mail: *Michelle.Honcharik@nrc.gov.*

SUPPLEMENTARY INFORMATION: TSTF–513, Revision 3, is applicable to PWR plants. Licensees opting to apply for this TS change are responsible for reviewing TSTF–513, Revision 3, and the NRC staff's model SE, referencing the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). It is acceptable for licensees to use plant-specific system names, TS numbering and titles. The NRC will process each amendment application responding to this notice of availability according to applicable NRC rules and procedures.

The CLIIP does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–513, Revision 3. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review and would not be reviewed as a part of the CLIIP. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–513, Revision 3.

For the Nuclear Regulatory Commission,

Melissa A. Ash,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–33074 Filed 12–30–10; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Renewals

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Peace Corps has submitted the following two (2) information collection to the Office of Management and Budget (OMB) for extension under the provisions of the Paperwork Reduction Act of 1995. This notice invites the public to comment on the renewal of two information collections: Correspondence Match Educator Enrollment Form and Teacher Survey (OMB 0420–0513) and Peace Corps Week Brochure (OMB 0420–0529). Peace Corps invites comments on whether the proposed collections of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: Comments regarding this collection must be received on or before February 2, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@peacecorps.gov.* Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: Proposal to renew the following three (3) information collections currently approved collection of information:

1. *Title:* Correspondence Match Enrollment Form and Teacher Survey.

OMB Control Number: 0420–0513.

Type of Review: Extension, without change, of a currently approved collection.

Respondents: Educators interested in promoting global education in the classroom.

Respondents' Obligation To Reply: Voluntary.

BURDEN TO THE PUBLIC

	Educator form	Teacher survey
a. Annual reporting burden:	1667 hours	250 hours
b. Estimated average burden response:	10 minutes	15 minutes
c. Frequency of response:	Annually	Once
d. Estimated number of likely respondents:	10,000	1,000
e. Estimated cost to respondents:	$0.00	$0.00

Purpose of collection: The information is used to make suitable matches between the educators and currently serving Peace Corps Volunteers as well as assess programmatic functions.

2. *Title:* Peace Corps Week Brochure.
OMB Control Number: 0420–0529.
Type Of Review: Extension, without change, of a currently approved information collection.
Respondents: Returned Peace Corps Volunteers and parents of currently serving Peace Corps Volunteers.
Respondents' Obligation To Reply: Voluntary.

BURDEN TO THE PUBLIC

a. Estimated total annual reporting burden:	500 hours
b. Estimated average burden response:	3 minutes
c. Frequency of response:	Once
d. Estimated number of likely respondents:	10,000
e. Estimated cost to respondents:	$0.00

Purpose of collection: This collection allows the Returned Volunteer Services Office to identify and provide support for interested people, promote these activities in local communities, and maintain address databases for future contact.

Dated: December 23, 2010.

Garry W. Stanberry,

Deputy Associate Director for Management.

[FR Doc. 2010–32915 Filed 12–30–10; 8:45 am]

BILLING CODE 6051–01–M

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2011–13 and CP2011–49; Order No. 614]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 33 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* January 4, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 33 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 33 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service states that the prices and classification underlying this contract are supported by Governors' Decision No. 09–6 in Docket No. MC2009–25. *Id.* The Request has been assigned Docket No. MC2011–13.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The instant contract has been assigned Docket No. CP2011–49.

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 09–6, originally filed in Docket No. MC2009–25, authorizing certain Priority Mail contracts;
- Attachment B—a redacted copy of the contract;
- Attachment C—a proposed change in the Mail Classification Schedule competitive product list;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

In the Statement of Supporting Justification, Josen Punnoose, Manager, Shipping Support (A), Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Mr. Punnoose contends there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 33 is included with the Request. *Id.*, Attachment B. The contract will become effective on the day after the Commission provides all necessary regulatory approvals. *Id.*, Attachment B, at 5. The contract will expire 5 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 33, under seal. *Id.*, Attachment F. It maintains that the contract, customer-identifying information, and related financial information, including the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections, should remain under seal. *Id.*, Attachment F, at 2–3. It also requests that the Commission order that the duration of such treatment of all customer-identifying information be extended indefinitely, instead of ending after 10 years. *Id.*, Attachment F, at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2011–13 and CP2011–49 for consideration of the Request pertaining to the proposed Priority Mail Contract

[1] Request of the United States Postal service to Add Priority Mail Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 17, 2010 (Request).

33 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020, subpart B. Comments are due no later than January 4, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Derrick D. Dennis to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2011–13 and CP2011–49 for consideration of the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than January 4, 2011.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–32954 Filed 12–30–10; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2011–13 and CP2011–49; Order No. 614]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 33 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* January 4, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 33 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 33 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service states that the prices and classification underlying this contract are supported by Governors' Decision No. 09–6 in Docket No. MC2009–25. *Id.* The Request has been assigned Docket No. MC2011–13.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The instant contract has been assigned Docket No. CP2011–49.

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 09–6, originally filed in Docket No. MC2009–25, authorizing certain Priority Mail contracts;
- Attachment B—a redacted copy of the contract;
- Attachment C—a proposed change in the Mail Classification Schedule competitive product list;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

In the Statement of Supporting Justification, Josen Punnoose, Manager, Shipping Support (A), Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Mr. Punnoose contends there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 33 is included with the Request. *Id.,* Attachment B. The contract will become effective on the day after the Commission provides all necessary regulatory approvals. *Id.,* Attachment B, at 5. The contract will expire 5 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.,* Attachment D.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 33, under seal. *Id.,* Attachment F. It maintains that the contract, customer-identifying information, and related financial information, including the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections, should remain under seal. *Id.,* Attachment F, at 2–3. It also requests that the Commission order that the duration of such treatment of all customer-identifying information be extended indefinitely, instead of ending after 10 years. *Id.,* Attachment F, at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2011–13 and CP2011–49 for consideration of the Request pertaining to the proposed Priority Mail Contract 33 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than January 4, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Derrick D. Dennis to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2011–13 and CP2011–49 for consideration of the matters raised in each docket.

[1] Request of the United States Postal Service to Add Priority Mail Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 17, 2010 (Request).

2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 4, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–32975 Filed 12–30–10; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2011–14 and CP2011–50; Order No. 615]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Express Mail Contract 11 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* January 4, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Express Mail Contract 11 to the competitive product list.[1] The Postal Service asserts that Express Mail Contract 11 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Postal Service states that the prices and classification underlying this contract are supported by Governors' Decision No. 09–14 in Docket Nos. MC2010–5 and CP2010–5. *Id.* The Request has been assigned Docket No. MC2011–14.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2011–50.

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 09–14, originally filed in Docket Nos. MC2010–5 and CP2010–5, authorizing certain Express Mail contracts;
- Attachment B—a redacted copy of the contract;
- Attachment C—a proposed change in the Mail Classification Schedule competitive product list;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

In the Statement of Supporting Justification, Josen Punnoose, Manager, Shipping Support (A), Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Mr. Punnoose contends there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Express Mail Contract 11 is included with the Request. *Id.,* Attachment B. The contract will become effective the day after the Commission provides all necessary regulatory approvals. *Id.,* Attachment B, at 3. The contract will expire 5 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.,* Attachment D.

The Postal Service filed much of the supporting materials, including the specific Express Mail Contract 11, under seal. *Id.,* Attachment F. It maintains that the contract, customer-identifying information, and related financial information, including the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections, should remain under seal. *Id.,* Attachment F, at 2–3. It also requests that the Commission order all customer-identifying information to remain under seal indefinitely, instead of ending after 10 years. *Id.,* Attachment F, at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2011–14 and CP2011–50 for consideration of the Request pertaining to the proposed Express Mail Contract 11 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than January 4, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Derrick D. Dennis to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2011–14 and CP2011–50 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 4, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–32955 Filed 12–30–10; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 17, 2010 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2011–15 and CP2011–51; Order No. 616]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail—Non-published Rates to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* January 11, 2011. *Reply comments are due:* January 18, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 17, 2010, the Postal Service requested that the Commission add Priority Mail—Non-published Rates to the competitive product list within the Mail Classification Schedule (MCS).[1] This product is modeled after the Global Expedited Package Services—Non-published Rates product that the Commission approved in Order No. 593.[2]

Request. In support of its Request, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of Governors' Decision No. 10–6 and attachments thereto, including MCS language describing Priority Mail—Non-published Rates, pricing and methodology, management analysis, and certification that the prices and methodology satisfy applicable criteria;
- Attachment 2—a model contract between the Postal Service and a customer of Priority Mail—Non-published Rates;
- Attachment 3—a Statement of Supporting Justification as required by 39 CFR 3020.32; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the Governors' Decision, with attachments, and supporting documents under seal.

Comments. Interested persons may submit comments on or before January 11, 2011. Reply comments may be submitted no later than January 18, 2011.

Public Representative. Pursuant to 39 U.S.C. 505, the Commission hereby appoints Derrick D. Dennis to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding. Neither Derrick D. Dennis nor any staff assigned to assist him shall participate in or provide any advice on any Commission decision in this proceeding other than in their designated capacity.

It is ordered:

1. The Commission establishes Docket Nos. MC2011–15 and CP2011–51 to consider matters raised in the Postal Service's December 17, 2010 Request.
2. Comments are due January 11, 2011. Reply comments are due January 18, 2011.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Derrick D. Dennis to represent the interests of the general public in this proceeding.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–32974 Filed 12–30–10; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service Concerning Priority Mail—Non-Published Rates and Notice of Filing Materials Under Seal, December 17, 2010 (Request).

[2] Docket Nos. MC2010–29 and CP2010–72, Order Approving Postal Service Request to Add Global Expedited Package Services—Non-Published Rates 1 to the Competitive Product List, November 22, 2010 (Order No. 593).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63609; File No. SR–NYSEArca–2010–116]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the WisdomTree Asia Bond Fund

December 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 13, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust ("Trust") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): WisdomTree Asia Bond Fund ("Fund"). The shares of the Fund are collectively referred to herein as the "Shares."[3] 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

The Exchange proposes to list and trade the Shares of the WisdomTree Asia Bond Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[4] The Fund will

[3] *See* Form 19b–4 Information of the proposed rule change at 3.

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust);

be an actively managed exchange-traded fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company and the Fund has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[5]

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund.[6] WisdomTree Asset Management is not affiliated with any broker-dealer. Mellon Capital Management serves as sub-adviser for the Fund ("Sub-Adviser").[7] The Bank of New York Mellon is the administrator, custodian and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.[8]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[9] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.[10] In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

WisdomTree Asia Bond Fund

According to the Registration Statement, the Fund seeks to provide investors with a high level of total return consisting of both income and capital appreciation. The Fund is an actively managed exchange-traded fund ("ETF"). The Fund is designed to provide exposure to a broad range of Asian government and corporate bonds through investment in both local currency (*e.g.,* Hong Kong dollar; South Korean won) and U.S. dollar-denominated Fixed Income Securities. For purposes of this proposed rule change, Fixed Income Securities include bonds, notes or other debt obligations, such as government or corporate bonds, denominated in local currencies or U.S. dollars, as well as issues denominated in Asian local currencies that are issued by "supranational issuers," such as the European Investment Bank, International Bank for Reconstruction and Development, and the International Finance Corporation, as well as development agencies supported by other national governments. The Fund may also invest in Money Market Securities and derivative instruments, as described below.

The Fund seeks to achieve its investment objective through direct and indirect investments in Fixed Income Securities issued by governments and corporations in Asian countries. The Fund intends to focus on the developing/emerging market economies in Asia, primarily China, Hong Kong, India, Indonesia, South Korea, Malaysia, the Philippines, Singapore, Taiwan and Thailand. While the Fund is permitted to invest in developed market economies, this is not a focus of the Fund. Therefore, although the Fund is permitted to do so, the Fund is unlikely to invest in issuers in Japan, Australia, or New Zealand.

The Fund is designed to provide broad exposure to Asian government and corporate bonds and will invest in a range of instruments with varying credit risk and duration. The Fund

58564 (September 17, 2008), 73 FR 55194 (September 24, 2008) (SR–NYSEArca–2008–86) (order approving Exchange listing and trading of WisdomTree Dreyfus Emerging Markets Fund); 62604 (July 30, 2010), 75 FR 47323 (August 5, 2010) (SR–NYSEArca–2010–49) (order approving listing and trading of WisdomTree Emerging Markets Local Debt Fund); 62623 (August 2, 2010), 75 FR 47652 (August 6, 2010) (SR–NYSEArca–2010–51) (order approving listing and trading of WisdomTree Dreyfus Commodity Currency Fund).

[5] *See* Post-Effective Amendment No. 41 to Registration Statement on Form N–1A for the Trust, dated October 19, 2010 (File Nos. 333–132380 and 811–21864). The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

[6] WisdomTree Investments, Inc. ("WisdomTree Investments") is the parent company of WisdomTree Asset Management.

[7] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

[8] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the Federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[10] The Exchange represents that the Adviser and Sub-Adviser, and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

intends to invest in both bonds and debt instruments issued by the governments of Asia and their agencies and instrumentalities and as well in bonds and other debt instruments issued by corporations organized in Asian countries. The Fund also may invest in Fixed Income Securities denominated in Asian local currencies that are issued by supranational issuers, as described above. The Fund also may invest in inflation-linked Fixed Income Securities denominated in Asian local currencies.

The Fund intends to invest at least 70% of its net assets in Fixed Income Securities.[11] The Fund expects to invest up to 20% of its net assets in Asian corporate bonds. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment.[12] Economic and other conditions in Asia may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than $200 million par amount outstanding if (i) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of providing exposure to a broad range of Asian government and corporate bonds, and (iii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.

According to the Registration Statement, the Fund typically will maintain aggregate portfolio duration of between 2 and 8 years. Aggregate portfolio duration is a measure of the portfolio's sensitivity to changes in the level of interest rates. The Fund's actual portfolio duration may be longer or shorter depending upon market conditions.

The universe of Asian Fixed Income Securities includes securities that are rated "investment grade" as well as "non-investment grade" securities. The Fund is designed to provide a broad-based, representative exposure to Asian government and corporate bonds and therefore will invest in both investment grade and non-investment grade securities in a manner designed to provide this exposure. The Fund expects that it will have 75% or more of its assets invested in investment grade securities, and no more than 25% of its assets invested in non-investment grade securities. Because the Fund is designed to provide exposure to a broad range of Asian government and corporate bonds, and because the debt ratings of the Asian governments and those corporate issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade securities will change from time to time in response to economic events and changes to the credit ratings of the Asian government and corporate issuers.[13] Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 15% of its assets in securities rated B or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is, determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of "comparable quality," the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

The Fund will hold Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government, or any non-U.S. government, or their respective agencies and instrumentalities or government-sponsored enterprises).

The Fund intends to qualify each year as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. The Subchapter M diversification tests generally require that (i) the Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are

[11] The category of "Asian debt" includes both U.S. dollar-denominated debt and non-U.S. or "local" currency debt. According to the Emerging Markets Traders Association, the global dollar amount of emerging market debt instruments traded in 2009 was $4.445 trillion, of which Asian emerging market (*i.e.,* excluding Japan) debt represented $1.609 trillion. Asian sovereign debt issued by major emerging market countries in 2009 included: (1) China, $175 billion; (2) Hong Kong, $590 billion; (3) India, $164 billion; (4) Indonesia, $63 billion; (5) Malaysia, $119 billion; (6) Philippines, $61 billion; (7) Singapore, $166 billion; (8) South Korea, $172 billion; (9) Taiwan, $27 billion; and (10) Thailand, $43 billion. Local market instruments traded among major Asian emerging markets in 2009 included: (1) Hong Kong, $557 billion; (2) India, $148 billion; (3) China, $147 billion; (4) Singapore, $146 billion; and (5) South Korea, $93 billion. (Source: Emerging Markets Traders Association, 2009 Annual Debt Trading Volume Survey, March 8, 2010. Additional information relating to emerging market corporate bonds is available at: *http://www.emta.org.*) Local currency bond issuance in emerging East Asian markets (comprising China, Hong Kong, Taiwan, Indonesia, South Korea, Malaysia, Philippines, Singapore, Thailand and Viet Nam) grew by 18.8% through June 2010. (Source: Asian Development Bank, *Asia's Local Bond Markets Expand 18.8%, Foreign Investment Soars* (October 4, 2010), *http://www.adb.org.*)

The Adviser represents that Asian sovereign debt is typically issued in large par size and tends to be very liquid. Local currency-denominated Asian debt issued by supranational entities is also actively traded. Intra-day, executable price quotations on such instruments are available from major broker-dealer firms. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

[12] The Adviser represents that the size and liquidity of the market for emerging market bonds, including Asian corporate bonds, generally has been increasing in recent years. The aggregate dollar amount of emerging market corporate bonds traded in 2009 was $514 billion, representing a 32% increase over the $380 billion traded in 2008. Turnover in emerging market corporate debt accounted for 12% of the overall volume of emerging market debt of $4.445 trillion in 2009, an increase over the 9% share in 2008. (Source: Emerging Markets Traders Association Press Release, March 8, 2010.) Additional information relating to emerging market corporate bonds is available at: *http://www.emta.org.* Annual growth in the emerging East Asian corporate bond markets (comprising China, Hong Kong, Taiwan, Indonesia, South Korea, Malaysia, Philippines, Singapore, Thailand and Viet Nam) increased by 24.4% through June 2010. China's local currency corporate bond market grew by 52.7% over that period. (Source: Asian Development Bank, *Asia's Local Bond Markets Expand 18.8%, Foreign Investment Soars* (October 4, 2010), *http://www.adb.org.*) Corporate bonds outstanding in representative emerging East Asian markets as of June 2010, included: (1) China, $546 billion; (2) Hong Kong, $73 billion; (3) Indonesia, $10 billion; (4) South Korea, $571 billion; (5) Malaysia, $91 billion; (6) Philippines, $8 billion; (7) Singapore, $70 billion; (8) Thailand, $38 billion; and (9) Viet Nam, $2 billion (Source: Asian Development Bank, *Asia Bond Monitor* (October 2010), *http://www.adb.org.*)

[13] As of October 19, 2010, government debt of China, Hong Kong, India, Malaysia, Singapore, South Korea, Taiwan and Thailand was rated investment grade by S&P and Fitch. The sovereign debt of Indonesia and the Philippines was rated just below investment grade. *See http://www.standardandpoors.com; http://www.fitchratings.com.*

controlled by the Fund and that are engaged in the same, similar or related trades or businesses, and (ii) at least 50% of the Fund's total assets consist of cash and cash items, U.S. government securities, securities of other RICs and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of the Fund's total assets and 10% of the outstanding voting securities of such issuer.

In addition to satisfying the above referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the portfolio and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

Money Market Securities

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade; except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade.

Derivative Instruments

The Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include listed futures contracts,[14] forward currency contracts, non-deliverable forward currency contracts, currency and interest rate swaps, currency options, options on futures contracts, swap agreements and credit-linked notes.[15] The Fund's use of derivative instruments (other than credit-linked notes) will be collateralized or otherwise backed by investments in short term, high-quality U.S. money market securities. The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures, forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, under applicable Federal securities laws, rules, and interpretations thereof, the Fund must "set aside" liquid assets, or engage in other measures to "cover" open positions with respect to such transactions.

The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to "lock in" the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

The Fund may enter into swap agreements, including interest rate swaps and currency swaps (*e.g.,* Hong Kong dollar vs. U.S. dollar), and may buy or sell put and call options on foreign currencies, either on exchanges or in the over-the-counter market. The Fund may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks, and may enter into reverse repurchase agreements, which involve the sale of securities held by the Fund subject to its agreement to repurchase the securities at an agreed upon date or upon demand and at a price reflecting a market rate of interest.

The Fund may invest in the securities of other investment companies (including money market funds and ETFs). The Fund may invest up to an aggregate amount of 10% of its net assets in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.

The Fund will not invest in non-U.S. equity securities.

The Shares

The Fund issues and redeems Shares on a continuous basis at NAV[16] only in large blocks of shares ("Creation Units") in transactions with authorized participants. Creation Units consist of 100,000 Shares.[17] The Fund issues and redeems Creation Units in exchange for a portfolio of Fixed Income Securities closely approximating the holdings of the Fund and/or an amount of cash in U.S. dollars. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Availability of Information

The Fund's Web site (*http://www.wisdomtree.com*), which will be

[14] The listed futures contracts in which the Fund will invest may be listed on exchanges either in the U.S. or in either Hong Kong or Singapore. Both Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"), which is a multi-party information sharing arrangement among major financial regulators. Both the SEC and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

[15] The Fund may invest in credit-linked notes. A credit linked note is a type of structured note whose value is linked to an underlying reference asset. Credit linked notes typically provide periodic payments of interest as well as payment of principal upon maturity. The value of the periodic payments and the principal amount payable upon maturity are tied (positively or negatively) to a reference asset such as an index, government bond, interest rate or currency exchange rate. The ongoing payments and principal upon maturity typically will increase or decrease depending on increases or decreases in the value of the reference asset. The Fund's investments in credit-linked notes will be limited to notes providing exposure to Asian Fixed Income Securities. The Fund's overall investment in credit-linked notes will not exceed 25% of the Fund's assets.

[16] The NAV of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4 p.m. Eastern time ("NAV Calculation Time"). NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* the Registration Statement.

[17] *See* E-mail from Timothy Malinowski, Senior Director, NYSE Euronext, to Daniel Gien, Staff Attorney, Division of Trading and Markets, Commission, dated December 15, 2010.

publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),[18] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session [19] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[20] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of Fixed Income Securities, and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. In addition, during hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

Intra-day and end-of-day prices are readily available through major market data providers and broker-dealers for the Fixed Income Securities, Money Market Securities and derivative instruments held by the Fund.

Initial and Continued Listing

The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 under the Exchange Act,[21] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[22]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

[18] The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[19] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[20] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[21] *See* 17 CFR 240.10A–3.

[22] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[23] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.600 are intended to protect investors and the public interest.

[23] 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–116 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–2010–116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2010–116 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32943 Filed 12–30–10; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63610; File No. SR–NYSEArca–2010–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF

December 27, 2010.

I. Introduction

On November 5, 2010, NYSE Arca, Inc. ("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 list and trade shares ("Shares") of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF ("Funds") of the ProShares Trust II ("Trust") under NYSE Arca Equities Rule 8.200, Commentary .02.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposed rule change was published for comment in the **Federal Register** on November 22, 2010.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under NYSE Arca Equities Rule 8.200, Commentary .02.[4] The Funds will seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index and the benchmark for ProShares VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and, collectively, "Indexes").[5] The Funds will invest in futures contracts based on the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") to pursue their respective investment objectives. Each Fund also may invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable-rate demand notes, and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts.

ProShare Capital Management LLC, a Maryland limited liability company, serves as the Sponsor of the Trust and is a commodity pool operator and commodity trading advisor.[6] Brown Brothers Harriman & Co. serves as the administrator ("Administrator"), custodian and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. serves as distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

If a Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately as much on a percentage basis as the level of its corresponding Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of its corresponding Index when it declines. Each Fund will acquire exposure through VIX futures contracts traded on the CBOE Futures Exchange ("CFE") ("VIX Futures Contracts"), such that each Fund has exposure intended to approximate the benchmark at the time of the net asset value ("NAV") calculation.

Each Fund will not be actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial, and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Sponsor will seek to cause the NAV to track the performance of an Index, even during periods in which that benchmark is flat or moving in a manner which causes the NAV of a Fund to decline.

The Indexes act as a measure of volatility as reflected by the price of certain VIX Futures Contracts ("Index Components"), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts. Unlike the Indexes, the VIX, which is not a benchmark for either Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on the CBOE.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's CFE VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Specifically, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five-month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth, and seventh month VIX Futures Contracts, and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Additional information regarding the Funds and the Shares, the Indexes and calculation of Index values, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[7]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be 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 Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200, Commentary .02 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[11] which sets forth Congress' finding that it is in the

[3] *See* Securities Exchange Act Release No. 63317 (November 16, 2010), 75 FR 71158 ("Notice").

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] Standard & Poor's Financial Services LLC is the index sponsor with respect to the Indexes.

[6] The Funds have filed a Registration Statement on Form S–3 under the Securities Act of 1933, dated November 5, 2010 (File No. 333–163511) ("Registration Statement").

[7] *See* Notice and Registration Statement, *supra* notes 3 and 6.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The level of each Index will be published at least every 15 seconds both in real-time from 9:30 a.m. to 4:15 p.m. Eastern Time and at the close of trading on each Business Day [12] by Bloomberg L.P. and Reuters.[13] The closing prices and settlement prices of the Index Components are available from the Web sites of the CFE, automated quotation systems, published or other public sources, and on-line information services such as Bloomberg or Reuters. The specific contract specifications for the component futures underlying the Indexes are also available on those Web sites, as well as on other financial informational sources. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. In addition, the Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Funds. Further, NYSE Arca will calculate and disseminate every 15 seconds throughout the trading day an updated Indicative Optimized Portfolio Value ("IOPV"), which is an indicator of the value of the VIX Futures Contracts and cash and/or cash equivalents less liabilities of a Fund.[14] The NAV for the Funds' Shares will be calculated by the Administrator once a day,[15] and the Exchange will make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and number of Shares outstanding.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination to the IOPV, the value of the Index, the VIX, or the value of the underlying VIX Futures Contracts occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[16] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that Standard & Poor's Financial Services LLC, the index sponsor with respect to the Indexes, has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (e) trading information.

(5) The Shares must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.[17]

(6) A minimum of 100,000 Shares of each of the Funds will be outstanding as of the start of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2010–101), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32984 Filed 12–30–10; 8:45 am]

BILLING CODE 8011–01–P

[12] A "Business Day" means any day other than a day when any of the NYSE, the NYSE Arca, the CBOE, or the CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Indexes is closed for regular trading.

[13] Complete real-time data for component futures underlying the Indexes is available by subscription from Reuters and Bloomberg. In addition, the Funds' Web site at *http://www.proshares.com* will display the end of day closing Index levels and NAV.

[14] The IOPV is published on NYSE Arca's Web site and is available through on-line information services such as Bloomberg and Reuters.

[15] Each Fund's NAV will be calculated at 4:15 p.m. Eastern Time.

[16] Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[17] 17 CFR 240.10A–3.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63602; File No. SR–NFA–2010–04]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments, as Modified by Amendment No. 1 Thereto, to the Interpretive Notice Regarding NFA Compliance Rule 2–9: Enhanced Supervisory Requirements

December 22, 2010.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–7 under the Exchange Act,[2] notice is hereby given that on October 7, 2010, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the NFA. On December 7, 2010, NFA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed this proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On October 6, 2010, NFA requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary.[3] On October 20, 2010, the CFTC notified NFA that it had determined not to review the proposed rule change.[4]

I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

The proposed amendments to NFA Compliance Rule 2–9's Interpretive Notice entitled "Enhanced Supervisory Requirements" ("Notice") would provide limited relief for some Members that currently would qualify for the enhanced supervisory requirements ("Requirements") based on a firm principal's previous affiliation with another Member firm that was subject to the Requirements; makes changes to the enhanced capital requirements in light of a recent increase in the futures commission merchant ("FCM") minimum capital requirement; makes changes to deal with the enhanced capital requirements for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") in a manner more consistent with the nature of their business; requires specific items to be included in a firm's written supervisory procedures; requires quarterly rather than monthly reports on a firm's compliance with the Requirements; and includes clarifying language in three areas: (1) Charging abnormally high commissions and fees; (2) the effect that receiving a waiver has on determining whether a Member is a firm that has met the criteria for future situations involving the Requirements; and (3) the status of a "five year" Disciplined Firm after it has been dropped from the "five year" list.

The text of the Interpretive Notice is available on NFA's Web site at *http://www.nfa.futures.org*, the Commission's Web site at *http://www.sec.gov*, the self-regulatory organization's 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, NFA 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. NFA 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 15A(k) of the Exchange Act[5] makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members") who are registered as brokers or dealers under Section 15(b)(11) of the Exchange Act.[6] The Interpretive Notice entitled: "NFA Compliance Rule 2–9: Enhanced Supervisory Requirements" applies to all Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11) of the Exchange Act.

Member firms trigger the Requirements based upon the regulatory background of either their associated persons ("APs") or principals. Member firms triggering the Requirements must record all telephone conversations with customers and prospects, pre-submit promotional material, adopt written supervisory procedures and either operate under a guarantee agreement or maintain an enhanced capital level. The proposed amendments to the Notice include:

- Limited relief for some Members that would currently qualify for the Requirements based on a firm principal's previous affiliation with another Member firm that was subject to the Requirements;
- Changes to the enhanced capital requirements in light of a recent increase in the FCM minimum capital requirement;
- Changes to deal with the enhanced capital requirements for CPOs and CTAs in a manner more consistent with the nature of their business;
- Requiring specific items to be included in a firm's written supervisory procedures;
- Requiring quarterly rather than monthly reports on a firm's compliance with the Requirements; and
- Clarifying language regarding: (1) Charging abnormally high commissions and fees; (2) the effect that receiving a waiver has on future situations involving the Requirements; and (3) the status of a "five year" Disciplined Firm after it has been dropped from the "five year" list.

Historically, a Member would trigger the Requirements only if it had a defined percentage of APs who had previously worked for a Disciplined Firm.

In 2005, NFA's Board made revisions to the Notice after recognizing that the principals of several firms that had triggered the Requirements had avoided them by simply closing their firms and opening other firms that had a mix of APs that did not trigger the Requirements. NFA noted that the new firms typically had APs from the closed firm who had worked at Disciplined Firms, but their percentage ratios to the overall AP population of the new firms were below the triggering point for imposing the Requirements. NFA's Board addressed this issue by amending the Notice to provide that once a firm had triggered the Requirements, then any other firms of which the principals of the qualifying firm are also principals would become subject to the Requirements.

NFA believes that the 2005 revision has been generally effective in discouraging the practice of sham reorganizations to avoid the Requirements. However, NFA has found

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* Letter from Thomas W. Sexton III, Senior Vice President/General Counsel, NFA, to William Penner, Deputy Directory, CFTC (Oct. 6, 2010).

[4] *See* Letter from William Penner, Deputy Director, CFTC, to Thomas W. Sexton III, General Counsel, NFA (Oct. 20, 2010).

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78o(b)(11).

that there were some principals whose firms triggered the Requirements with backgrounds that suggested they were not part of the population to which the amendment was designed to apply. NFA undertook the task of identifying objective criteria that were met by individuals who did not appear to be part of the target group but were, nevertheless, affected by the 2005 amendment. In doing so, NFA focused on criteria similar to those that have been adopted to provide exemptions to some APs who previously worked at Disciplined Firms. These criteria include a clean personal regulatory record and limited affiliation with potentially problematic Members.

NFA has identified a set of five criteria that apply to approximately 60 individuals and approximately five entities that do not appear to raise undue concerns regarding their ability to effectively supervise their firms. Those criteria include the following:

- The principal has not been personally subject to a disciplinary action by NFA or the CFTC;
- The principal has been a principal of only one firm that has qualified for the Requirements;
- The principal has never been a principal or an AP of a current Disciplined Firm;
- The firm in the principal's history that triggered the Requirements either received a full waiver from the Requirements or abided by the Requirements for at least two years and is no longer subject to the Requirements; and
- The firm in the principal's history that triggered the Requirements has not become subject to a sales practice action since triggering the Requirements.

NFA believes that exempting Members from adopting the Requirements when those Requirements are triggered by a principal who meets the aforementioned five criteria would eliminate the need for some waiver petitions (which are typically granted), saving time and undue complications for the affected Members, the Telemarketing Procedures Waiver Committee ("Waiver Committee") and NFA staff. NFA believes that this exemption could provide relief to certain principals whose profiles indicate that they are unlikely to pose any supervisory issues. In addition, NFA does not believe that this change will diminish customer protection because the principals that will be exempted are those principals who would almost always have been granted a waiver based on meeting the aforementioned criteria.

The Notice currently provides that FCMs affected by the Notice are required to maintain adjusted net capital ("ANC") of at least $1,000,000. When this provision was adopted the minimum ANC level was $500,000. However, the minimum ANC for all FCMs was raised to $1,000,000 in March 2010, rendering the current provision moot.

NFA proposes to revise the language in the Notice regarding the enhanced level of ANC required to be maintained by affected FCMs to tie the required enhanced ANC to the minimum ANC for FCMs. The proposed amendments would track the approach taken by the Board in 2008 to deal with changes to the enhanced ANC provision for Forex Dealer Members ("FDMs"). Specifically, rather than set a defined number, it would tie the enhanced ANC level for FCMs to the early warning requirement under CFTC rules, which is currently 150% of required ANC. NFA believes that this revision would not only bring the current enhanced ANC obligation into harmony with that required of FDMs, but would also provide flexibility in light of any future changes to the level of the minimum ANC required of FCMs.

The Notice currently requires CPOs and CTAs that trigger the Requirements to maintain ANC of at least $250,000. In addition, affected CPOs and CTAs are currently subject to the financial recordkeeping and reporting requirements applicable to FCMs.

According to NFA, it is relatively uncommon for CPOs and CTAs to qualify for the Requirements, and if CPOs and CTAs do qualify, they often request relief from the $250,000 capital requirement even if they are required to tape. The Waiver Committee has dealt with ten waiver petitions from CPO or CTA Members and completely denied five of those petitions. Four of those firms are no longer NFA Members. The other five received partial waivers that reduced the enhanced ANC requirement. Two waivers set the required ANC level at $100,000, two set it at $75,000, and one eliminated the obligation altogether. Three of the five firms that received waivers remain NFA Members. In granting these petitions, the Waiver Committee recognized that because CPOs and CTAs do not have a minimum net capital requirement, imposing the reduced $100,000 requirement was sufficient to meet the purpose of the requirement.

In light of the Waiver Committee's past decisions regarding this issue, NFA proposes to amend the Notice to reduce the ANC required of CPOs and CTAs that trigger the Requirements from the current $250,000 to $100,000. In addition, the proposed amendments to the Notice would provide that the financial recordkeeping and reporting obligations of affected CPOs and CTAs be simplified by merely requiring them to demonstrate compliance with their enhanced ANC obligation to NFA upon request.

The proposed amendments to the Notice identify specific areas that would need to be addressed by an affected Member in the written supervisory procedures they are required to prepare. NFA believes that this addition will give clear guidance as to the minimum standards to be met in preparing written supervisory procedures. Generally, the proposed language requires procedures for monitoring, cataloging and logging taped conversations in an affected Member's written supervisory procedures.

The Notice currently requires affected Members to file monthly reports regarding their compliance with the Requirements. It has been NFA's experience in reviewing these reports that most of them tend to be repetitious in nature. Nevertheless, NFA feels that the reports are useful in that they periodically bring the Member's focus to bear on the Requirements, create a written historical record and, on occasion, may provide the impetus for corrective action by the Member. NFA proposes to change the frequency of the obligation to file such reports from monthly to quarterly. NFA believes that lengthening the frequency for filing the reports will not in any way diminish customer protection because the reports alone do not typically form the basis of an NFA investigation or disciplinary action. Moreover, NFA uses other methods to monitor Member compliance with the Requirements.

Members that charge 50% or more of their active customers round-turn commissions, fees and other charges that total $100 or more per futures, forex or option contract are required to adopt the Requirements. NFA represents that it has recently encountered situations in which Members purchase out-of-the-money options and charge a commission just short of $100. In these situations there are additional charges if the option is liquidated that would bring total charges above $100; however, NFA believes that it is often the case that the out-of-the-money options expire worthless and no additional costs are assessed. The result is that some Members are able to avoid the Requirements by encouraging their customers to take on riskier out-of-the-money positions that are less likely to

incur liquidation charges that would raise costs to $100 or more.

Members that engage in the practice described above are, in NFA's view, clearly within the group of Members that the Board believed should be subject to the Requirements when it chose to use high commissions and fees as a trigger for imposing the Requirements. Therefore, the proposed amendments to the Notice provide that trading an options contract that would result in total commissions, fees and other charges of $100 or more if the trade was liquidated will be deemed to have been charged $100 even if the contract is not ultimately liquidated.

The proposed amendments to the Notice would add language that NFA believes would clarify that a Member that receives a full or partial waiver is still deemed to be a Member that has met the criteria for purposes of the Notice.

From 1993 until 2007, the term "Disciplined Firm" included only Members that had been permanently barred from the industry as the result of a sales practice or promotional material action. In 2007, the amendments to the Notice added Members that had been sanctioned in any way in a sales practice or promotional material action within the preceding five years to the definition of a Disciplined Firm. This resulted in the creation of a list of "five year" Disciplined Firms that is separate from the list of permanent Disciplined Firms. The electronic reporting system that monitors Disciplined Firms automatically removes these firms from the Disciplined Firm list once five years have passed.

According to NFA, there has been some confusion expressed as to whether a "five year" Disciplined Firm is still considered to be a Disciplined Firm for purposes of triggering the Requirements once the firm is dropped from the "five year" list. NFA believes that the proposed amendments to the Notice would eliminate this confusion by simply adding the word "current" before the term "Disciplined Firm" in four relevant places in Section III (B)(1) of the Notice.

Amendments to the Interpretive Notice regarding NFA Compliance Rule 2–9: Enhanced Supervisory Requirements were previously filed with the SEC in SR–NFA–2003–01, Exchange Act Release No. 34–47533 (Mar. 19, 2003), 68 FR 14733 (Mar. 26, 2003); SR–NFA–2005–01, Exchange Act Release No. 34–52808 (Nov. 18, 2005), 70 FR 71347 (Nov. 28, 2005); SR–NFA–2006–01, Exchange Act Release No. 34–53568 (Mar. 29, 2006), 71 FR 16850 (Apr. 4, 2006); SR–NFA–2007–03, Exchange Act Release No. 34–55710 (May 4, 2007), 72 FR 26858 (May 11, 2007); SR–NFA–2007–07, Exchange Act Release No. 34–57142 (Jan. 14, 2008), 73 FR 3502 (Jan. 18, 2008); and SR–NFA–2008–01, Exchange Act Release No. 34–57640 (Apr. 9, 2008), 73 FR 20341 (Apr. 15, 2008).

2. Statutory Basis

NFA believes that the proposed rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Exchange Act.[7] That section sets out requirements for rules of futures associations, registered under Section 17 of the Commodity Exchange Act,[8] that are a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to Section 15(b)(11) of the Exchange Act. Under Section 15A(k)(2)(B), the rules of such a limited purpose national securities association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to the rules of a registered national securities association applicable to security futures products. NFA believes the proposed rule change would meet these requirements by: Providing limited relief for some Members that would currently qualify for the Requirements based on a principal's previous affiliation with another Member firm that was subject to the Requirements; changing the enhanced capital requirements in light of a recent increase in the FCM minimum capital requirement; changing the enhanced capital requirements for CPOs and CTAs in a manner more consistent with the nature of their business; requiring specific items to be included in a firm's written supervisory procedures; requiring quarterly rather than monthly reports on a firm's compliance with the Requirements; and clarifying language regarding—charging abnormally high commissions and fees; the effect that receiving a waiver has on determining whether a Member is a firm that has met the criteria for futures situation involving the Requirements; and the status of a "five year" Disciplined Firm after it has been dropped from the "five year" list.

[7] 15 U.S.C. 78o–3(k)(2)(D).

[8] 7 U.S.C. 21.

B. Self-Regulatory Organization's Statement on Burden on Competition

NFA believes that the portion of the proposed rule change that exempts Members from adopting the Requirements when those Requirements are triggered by a principal who meets the specified five criteria should lessen the burden on competition by eliminating the need for waiver requests that are typically granted and decreasing the number of firms that are subject to the requirement by automatically exempting firms that qualify based on principals whose profiles indicate that they are unlikely to pose supervisory problems.

NFA does not believe that the proposed changes to CPO and CTA capital requirements and reporting requirements for firms that trigger the Requirements would impose any burden on competition.

Although the proposed rule change would require FCMs subject to the Requirements to maintain additional capital, NFA believes that the increase is necessary in order to maintain the purpose behind the Requirements, and is also consistent with the approach NFA adopted with respect to FDMs. The minimum capital level for all FCMs was recently increased to $1,000,000, which is the same amount currently required of FCMs subject to the enhanced requirement. In order for the enhanced Requirements to maintain their original purpose, NFA believes that the capital requirement must be increased. Rather than setting another fixed dollar amount, the proposed amendment would tie the required enhanced ANC to the early warning requirement under CFTC rules (150% of minimum ANC). This revision would impose the same standard on FCM and FDM Members and take into consideration any future changes to ANC levels.

The proposed rule change identifies specific areas that need to be addressed by an affected Member in the written supervisory procedures it is currently required to prepare. NFA represents that the changes would not impose additional substantive requirements on Members. Rather, NFA believes this language would address requests for Members for specific guidance on how to comply with their obligation to monitor, catalog and log taped conversations. Therefore, NFA does not believe this change imposes any burden on competition.

The current rule requires Members that charge 50% or more of their active customers round-turn commissions, fees and other charges that total $100 or more per futures, forex or option

contract to adopt the Requirements. NFA has identified a trend where some Members encourage their customers to take on riskier out-of-the money options at a cost just below $100. Because in NFA's view these positions are much less likely to be liquidated and charged a liquidation fee, the total cost remains under the $100 threshold. NFA states that the proposed rule change may increase the number of Members subject to the Requirements because option contracts that would result in total commission, fees and other charges of $100 or more if the trade was liquidated will be deemed to have been charged $100 even if the trade is not liquidated. NFA believes that the additional burden is necessary, however, because Members that engage in this practice are clearly within the group of Members that NFA's Board believed should be subject to the enhanced Requirements when it chose to use high commissions and fees as a trigger for imposing the Requirements.

NFA believes that the proposed provision that changes a Member's reporting obligation with respect to its report on compliance with the Requirements will also lessen the burden on Members. Under this provision, a Member will be permitted to file this report on a quarterly rather than monthly basis.

NFA believes that the final two proposed revisions do not add any burden to competition because they are merely clarifying current requirements. One proposed rule change would add language that NFA believes makes it clear that a Member that receives a full or partial waiver is still deemed to be a Member that has met the criteria for purposes of the Notice. Another proposed rule change would add the word "current" before the term "Disciplined Firm" in four relevant places in order to clarify that a "five year" Disciplined Firm will no longer be a Disciplined Firm for purposes of triggering the Requirements once the firm is dropped from the "five year" list.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA states that it worked with its Member Advisory Committees in developing the rule change. NFA did not, however, publish the rule change to its membership for comment. NFA states that it did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On October 20, 2010, the CFTC notified NFA that it had approved the rule change, and therefore, NFA is permitted to make the amendments effective as of this date.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NFA–2010–04.

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–NFA–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NFA. 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33097 Filed 12–30–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(73).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA. *Fax:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax:* 410–965–6400. *E-mail address: OPLM.RCO@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 4, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Request for Waiver of Overpayment Recovery or Change in Repayment Notice—20 CFR 404.502–404.513, 404.515, 20 CFR 416.550–416.570, and 416.572—0960–0037.* When Social Security beneficiaries and Supplemental Security Income (SSI) recipients receive an accidental overpayment of benefits, they must repay the amount of the overpayment. These beneficiaries and recipients can use Form SSA–632–BK to take one of three actions: (1) Request an exemption from repaying, as recovery of the payment would cause financial hardship; (2) inform SSA they want to repay the overpayment at a monthly rate over a period longer than 36 months; and (3) request a different rate of recovery. In the latter two cases, the respondents must also provide financial information to SSA to help the agency determine how much the overpaid person can afford to repay each month. Respondents are overpaid beneficiaries or SSI recipients who are requesting a waiver of recovery of an overpayment or a lesser rate of withholding.

Type of Request: REVISION OF AN OMB-APPROVED INFORMATION COLLECTION.

Type of request	Number of respondents	Frequency of response	Response time	Total burden (hours)
Waiver of Overpayment (Completes Whole Paper Form)	400,000	1	2 hours	800,000
Change in Repayment (Completes Partial Paper Form)	100,000	1	45 minutes	75,000
Regional Application (New York Debt Management)	44,000	1	2 hours	88,000
Internet Instructions	500,000	1	5 minutes	41,667
Totals	1,044,000			1,004,667

2. *Employee Work Activity Questionnaire—20 CFR 404.1574 and 20 CFR 404.1592–0960–0483*—Social Security disability beneficiaries and SSI recipients qualify for payments when a verified physical or mental impairment prevents them from working. If disability claimants attempt to return to work after receiving payments, but are unable to continue working, they submit Form SSA–3033, Employee Work Activity Questionnaire, so SSA can evaluate their work attempt. SSA uses this form to evaluate unsuccessful subsidy work and determine applicants' continuing eligibility for disability payments. The respondents are employers of Social Security disability beneficiaries and SSI recipients who unsuccessfully attempted to return to work.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 3,750 hours.

3. *Sheltered Workshop Wage Reporting—0960–0771.* Sheltered workshops are nonprofit organizations or institutions that implement a recognized program of rehabilitation for handicapped workers, or provide such workers with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature. Sheltered workshops perform a service for their clients by reporting monthly wages directly to SSA. SSA uses the information these workshops provide to verify and post monthly wages to the SSI recipient's record. Most workshops report monthly wage totals to their local SSA office so we can adjust the client's SSI payment amount in a timely manner and prevent overpayments. Sheltered workshops are motivated to report wages voluntarily as a service to their clients. Respondents are sheltered workshops that report monthly wages for services performed in the workshop.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 900.

Frequency of Response: 12.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 2,700 hours.

Dated: December 28, 2010.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–33078 Filed 12–30–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0175]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 15, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 2, 2011.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0175.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Petty, (202) 366–6654, Office of Planning, Environment, and Realty; Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Planning and Research Program Administration.

OMB Control #: 2125–0039.

Background: Under the provisions of Title 23, United States Code, Section 505, 2 percent of Federal-aid highway funds in certain categories that are apportioned to the States are set aside to be used only for State Planning and Research (SPR). At least 25 percent of

the SPR funds apportioned annually must be used for research, development, and technology transfer activities. In accordance with government-wide grant management procedures, a grant application must be submitted for these funds. In addition, recipients must submit periodic progress and financial reports. In lieu of Standard Form 424, Application for Federal Assistance, the FHWA uses a work program as the grant application. The information contained in the work program includes task descriptions, assignments of responsibility for conducting the work effort, and estimated costs for the tasks. This information is necessary to determine how FHWA planning and research funds will be utilized by the State Transportation Departments and if the proposed work is eligible for Federal participation. The content and frequency of submission of progress and financial reports specified in 23 CFR part 420 are specified in OMB Circular A–102 and the companion common grant management regulations.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Annual.

Estimated Average Annual Burden per Response: 560 hours per respondent.

Estimated Total Annual Burden Hours: 29,120 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 22, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–32721 Filed 12–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for Proposed Transit Improvements to the North Red and Purple Lines, Cook County, IL

AGENCY: Federal Transit Administration, U.S. Department of Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as the lead Federal agency, and the Chicago Transit Authority (CTA) intend to prepare a Tier 1 Environmental Impact Statement (Tier 1 EIS) for the North Red and Purple Line Modernization (RPM) Project in Cook County, Illinois. The CTA operates the rapid transit system in Cook County, Illinois. The proposed project, described more completely within, would bring the North Red and Purple lines up to a state of good repair from the track structure immediately north of Belmont Station in Chicago, Illinois to the Linden terminal in Wilmette, Illinois. The purpose of this Notice of Intent is to (1) alert interested parties regarding the intent to prepare the EIS, (2) to provide information on the nature of the proposed project and possible alternatives, and (3) to invite public participation in the EIS process.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to CTA on or before February 18, 2011. *See* **ADDRESSES** below for the address to which written public comments may be sent. Four public scoping meetings to accept comments on the scope of the EIS will be held on the following dates:

- Monday, January 24, 2011; 6 p.m. to 8:30 p.m.; at St. Augustine College, 1345 West Argyle Street, Chicago, IL 60640.
- Tuesday, January 25, 2011; 6 p.m. to 8:30 p.m.; at the Nicholas Senn High School, 5900 North Glenwood Avenue, Chicago, IL 60660.
- Wednesday, January 26, 2011; 6 p.m. to 8:30 p.m.; at the New Field Primary School, 1707 West Morse Avenue, Chicago, IL 60626.
- Thursday, January 27, 2011; 6 p.m. to 8:30 p.m.; at the Fleetwood-Jourdain Community Center, 1655 Foster Street, Evanston, IL 60201.

The buildings to be used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance or language translation, such as a sign language interpreter, to participate in the scoping meeting should contact Mr. Jeff Wilson, Government and Community Relations Officer, Chicago Transit Authority, at 312–681–2712 or *jwilson@transitchicago.com*, five days prior to the meeting.

Scoping materials describing the project purpose and need and the alternatives proposed for analysis will be available at the meetings and on the CTA Web site *http://www.transitchicago.com/rpmproject.* Paper copies of the scoping materials may also be obtained from Mr. Jeff Wilson, Government and Community Relations Officer, Chicago Transit Authority, at 312–681–2712 or *jwilson@transitchicago.com.*

An interagency scoping meeting will be held on Monday, January 24 at 10:30 a.m. at CTA Headquarters, in Conference Room 2A, 567 W. Lake Street, Chicago, IL 60661. Representatives of Native American Tribal governments and Federal, State, regional, and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Mr. Steve Hands, Strategic Planning and Policy, Chicago Transit Authority, P.O. Box 7602, Chicago, IL 60680–7602, or via e-mail at *RPM@transitchicago.com.*

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Arkell, Community Planner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone 312–886–3704, e-mail *reginald.arkell@dot.gov.*

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and CTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the Tier 1 EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. The Tier 1 EIS will be a planning level EIS that will allow the CTA and FTA to use the National Environmental Policy Act (NEPA) process as a tool to involve agencies and the public in the decision making process for the project as well as to capture any associated or cumulative impacts on the environment. This process will ensure that: the complete 9.5-mile RPM corridor is analyzed; the EIS is used to help refine and prioritize design concepts, and; related components of the project are grouped together for future analysis. After this Tier 1 EIS process is complete, component projects can each be evaluated more specifically with a second-tier EIS and/or other NEPA environmental documentation as needed. These ensuing NEPA documents can reference and summarize information from the Tier 1 EIS and concentrate on the issues specific to the subsequent actions (40 CFR 1502.20). Comments should address (1) the project's priorities and appropriate cost-effective alternatives and components, and (2) any significant environmental impacts relating to the alternatives.

NEPA "scoping" (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the

significant issues associated with alternatives that will be examined in detail in the Tier 1 EIS, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scoping process is completed, a scoping report and annotated outline will be prepared and shared with interested agencies and the public. The report and outline serves at least three worthy purposes, including (1) documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Purpose and Need for the Project

The purpose of the North Red and Purple Line Modernization project is to bring the existing crucial transit asset into a state of good repair, while reducing travel times, improving access to job markets, responding to shifts in travel demand, better utilizing existing transit infrastructure and providing access to persons with disabilities in the north lakefront and north suburbs of Chicago. This project would also support the area's economic development initiatives and current transit supportive development patterns.

The need for the project is based on the following considerations: the North Red and Purple Line infrastructure is significantly past its useful life as most of it was constructed between 1900 and 1922; much of the infrastructure is dilapidated and continued degradation could increase the cost of maintenance and compromise service in the future; transit trips are delayed and unreliable due to antiquated infrastructure; the community relies on these facilities for all trip types including work access and reverse commutes; 15 of the 21 stations within the project area do not have access for persons with disabilities; the volume of passengers, over 128,000 trips on an average weekday representing over 19% of all weekday and 23% of all weekend CTA rail trips, could not be accommodated either on the currently congested road network or through bus transportation alternatives; and the project area population is growing, highly transit-reliant, and diverse.

Project Location and Environmental Setting

The project area extends from the track structure immediately north of Belmont station to Linden station, which is approximately 9.5 miles and includes 21 stations and two rail yards, the Howard Yard and the Linden Yard. Currently, the Red and Purple Lines operate beside each other on 4 tracks for 5.7 miles from north of Belmont station to Howard station, of which 1.9 miles is located on steel elevated structure and 3.8 miles on earthen embankment. The Purple Line operates alone on 2 tracks for 3.8 miles from Howard station to Linden station on earthen embankment.

The project area traverses dense urban single and multi family residential, commercial, and educational land uses and includes portions of Chicago's North Side, Evanston, and Wilmette, Illinois. The project area includes numerous parks and cemeteries, and crosses the North Shore Channel of the Chicago River.

Alternatives

Several alternatives are proposed for analysis in the EIS. Public input received during scoping will help to select, reject and/or revise the following alternatives.

No Action Alternative: The No Action Alternative would maintain the status quo. This alternative would include the absolute minimum repairs required to keep the Red and Purple lines functional. Travel patterns would remain the same. Travel times would likely continue to increase and service reliability would continue to degrade due to the need to safely operate on systems not considered in a state of good repair. Additional ADA access would not be provided. Minor repairs and upgrades would be made using current capital funding levels. The number of stations and station entrances would remain at 21 and 23, respectively. No stations would be renovated. The No Action Alternative is used as a basis for comparison for the other alternatives.

Basic Rehabilitation Alternative: This alternative includes a strategic mix of repairs, rehabilitation, and replacement to bring the Evanston Branch (between Linden Terminal and Howard Station) and the North Red Line (between Belmont Station and Howard Station) into a minimal state of good repair. It would provide adequate service for the next 20 years. The stations, viaducts, and other structural elements would not be brought up to modern standards and would only meet minimal ADA requirements. Upgrades would be made to signals and communication systems. The number of stations and station entrances would remain at 21 and 23, respectively.

Evanston Branch: The Evanston Branch, between Linden Terminal and Howard Station, is the northern section of the study area and is approximately 3.8 miles long. This segment currently has 2 operating tracks with 8 stations (not including Howard). Only one station would be renovated to accommodate 8 car trains; two stations which are already accessible would receive minor repairs; the other six stations would be renovated to meet minimal ADA requirements. This alternative consists of upgrades to existing structures primarily within the existing CTA right-of-way and maintenance of the existing overall track alignment, structure, and station configurations.

North Red Line: The North Red Line, between Belmont Station and Howard Station, is the southern section of the study area and is approximately 5.8 miles long. This segment currently has 4 operating tracks with 13 stations. Eight stations would be renovated to meet minimal ADA requirements; one station would be reconstructed; the remaining four stations are already accessible and would receive minor repairs. This alternative consists of upgrades to existing structures primarily within the existing CTA right-of-way and maintaining the existing overall track alignment, structure, and station configurations. Express service with no stops between Howard and Belmont would continue to be provided in both directions during peak periods.

Basic Rehabilitation with Transfer Stations Alternative: This alternative includes all of the elements of the Basic Rehabilitation Alternative plus new transfer stations at Wilson and Loyola. The number of stations would remain at 21 and the total number of station entrances would increase to 25.

Evanston Branch: Same as Basic Rehabilitation Alternative above in this segment for this alternative.

North Red Line: This alternative includes all of the elements of the Basic Rehabilitation Alternative plus new transfer stations at Wilson and Loyola. The new transfer stations and 1 mile of associated structures would have a useful life of 60–80 years; the rest of the improvements would have a useful life

of 20 years. Additional access to express service would be possible at the two new transfer stations. This alternative would allow for potential expanded hours of express service. Seven stations would be renovated to meet minimal ADA requirements; three stations would be reconstructed (two as transfer stations); the remaining three stations are already accessible and would receive minor repairs.

Modernization 4-Track Alternative: This alternative would provide modern amenities at stations, extend the useful life of the system for the next 60–80 years, increase speed and reliability, and address safety and accessibility concerns. This alternative would require significant right-of-way acquisitions. The number of stations would decrease to 17 and the total number of station entrances would increase to 31.

Evanston Branch: All stations would be reconstructed or renovated to meet modern standards for accessibility and safety including modern platform widths and clear lines of sight, in addition to being expanded to accommodate 8 car trains. Four stations would be reconstructed; the remaining two previously-modernized stations would receive minor repairs. Reconstruction of elevated structures and viaducts would bring them up to modern standards including clearances for cross streets underneath viaducts. Minimal acquisition would be required to straighten curves that currently slow service. The potential exists to consolidate stops while providing additional access points; examples of this could include: Adding a Washington entrance to Main station and removing South Blvd station; and adding a Gaffield entrance to Noyes station and a Church entrance to Davis station and removing Foster station.

North Red Line: All stations would be reconstructed or renovated to meet modern standards for accessibility and safety including modern platform widths and clear lines of sight. Nine stations would be reconstructed (two as transfer stations); the remaining one previously-modernized station would receive minor repairs. This alternative would provide express and local service in both directions by maintaining 4-tracks and would replace the existing structures and embankment with modern concrete aerial structure. This alternative would allow for potential expanded hours of express service. Substantial additional right-of-way would be required to increase platform widths and provide clear lines of sight, as well as to straighten curves that slow service. The potential exists to consolidate stops, while providing additional access points; examples of this could include: Adding an Ainslie entrance to Argyle station and removing Lawrence station; adding a Glenlake entrance to Granville station and a Hollywood entrance to Bryn Mawr station and removing Thorndale station; and providing additional access to Howard station at Rogers Avenue and removing Jarvis station.

Modernization 3-Track Alternative: This alternative would provide modern amenities at stations, extend the useful life of the system for the next 60–80 years, increase speed and reliability, and address safety and accessibility concerns. This alternative would remove one of the four tracks in the North Red Line corridor. The number of stations would decrease to 17 and the total number of station entrances would increase to 31. The number of stations to be reconstructed and repaired would be the same as the Modernization 4-Track Alternative above.

Evanston Branch: Same as Modernization 4-Track Alternative above in this segment for this alternative.

North Red Line: All stations would be reconstructed or renovated to meet modern standards for accessibility and safety including modern platform widths and clear lines of sight. This alternative would generally stay within the existing right-of-way, would eliminate one of the four existing tracks between Belmont and Howard to accommodate wider platforms, and would replace the existing structures and embankment with modern concrete aerial structure. Local service would be offered in both directions at all times and express service would be offered inbound in the morning and outbound in the evening; no reverse commute express service would be provided. Some right-of-way acquisition would be required to straighten curves that currently slow service. The potential exists to consolidate stops, while providing additional access points; possibilities would be the same as for the Modernization 4-Track Alternative above.

Modernization 2-Track Underground Alternative: This alternative would provide modern amenities at stations, extend the useful life of the system for the next 60–80 years, increase speed and reliability, and address safety and accessibility concerns. This alternative would operate underground in a new 2-track alignment in place of the current 4-track alignment in the North Red Line segment. The number of stations would decrease to 16 and the total number of station entrances would increase to 29.

Evanston Branch: Same as Modernization 4-Track Alternative above in this segment for this alternative.

North Red Line: This alternative would replace a significant portion of the existing 4-track elevated rail structure and embankment with a below-grade 2-track alignment. This alternative would provide a single more frequent local service in both directions between Linden and Belmont in this corridor; no express overlay service would be provided. The alternative alignment would begin north of Belmont and transition below ground, proceeding underneath the northbound Brown Line tracks. The alignment would continue northward generally following Sheffield/Sheridan to the intersection of Sheridan and Broadway, and then proceed north underneath Broadway until it transitions back to the elevated alignment just north of Loyola. Subway stations would be constructed at Addison, Irving Park, Wilson, Foster, Bryn Mawr, Glenlake, and Devon/Loyola. In total, seven modern stations would be constructed underground; one station would be reconstructed above ground; one previously-modernized station would receive minor repairs. The current 4-track earthen embankment between Loyola and Howard would be replaced with a 2-track modern concrete aerial structure. This alternative would require right-of-way acquisition outside of the existing Red Line alignment for station entrances and auxiliary structures. Curves would be straightened and new subway stops would be located to maximize train speed. The potential exists in the remaining elevated alignment to provide additional access to Howard station at Rogers Avenue and remove Jarvis station.

Possible Effects

The purpose of this Tier 1 EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the quality of the human and natural environment. Areas of investigation for transit projects generally include, but are not limited to: Land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species. Investigation may reveal that the proposed project will or will not substantially affect many of these areas. Measures will be identified to avoid, minimize, or mitigate any significant adverse impacts.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), calls for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and CTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American Tribes that may have an interest in the proposed project to become "participating agencies;" (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American Tribes that may have an interest in the proposed project. It is possible that FTA and CTA will not be able to identify all Federal and non-Federal agencies and Native American Tribes that may have such an interest. Any Federal or non-Federal agency or Native American Tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES.**

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on CTA's Web site, *http://www.transitchicago.com/rpmproject.* The public involvement program includes a full range of activities including maintaining the project Web page on the CTA Web site and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the project's public participation plan.

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably in advance of printing), FTA and its grantees will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document will be available for review at the CTA's offices and elsewhere; an electronic copy of the complete environmental document will also be available on the CTA's Web page.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR Part 771).

Issued on: December 22, 2010.

Marisol Simón,

Regional Administrator.

[FR Doc. 2010–33065 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0111]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for extension of a currently approved collection of information.

SUMMARY: This notice solicits public comments on continuation of the requirements for the collection of information on safety standards. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of labeling information on five Federal motor vehicle safety standards, for which NHTSA intends to seek OMB approval. The labeling requirements include brake fluid warning, glazing labeling, safety belt labeling, and vehicle certification labeling.

DATES: Comments must be received on or before March 4, 2011.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9324. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mrs. Lori Summers, U.S. Department of Transportation, NHTSA, Room W43–320, 1200 New Jersey Avenue SE., Washington, DC 20590. Mrs. Summer's telephone number is (202) 366–4917 and fax number is (202) 366–7002.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with

members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Consolidated Labeling Requirements for Motor Vehicles (except the VIN).

OMB Control Number: 2127–0512.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Summary of the Collection of Information: 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulations, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is "reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed," and whether such a standard will contribute to carrying out the purpose of the Act.

The Secretary is authorized to invoke such rules and regulations, as deemed necessary to carry out these requirements. Using this authority, the agency issued the following FMVSS and regulations, specifying labeling requirements to aid the agency in achieving many of its safety goals:

FMVSS No. 105, "Hydraulic and electric brake systems,"

FMVSS No. 135, "Light vehicle brake systems,"

FMVSS No. 205, "Glazing materials,"

FMVSS No. 209, "Seat belt assemblies," and

Part 567, "Certification."

This notice requests comments on the labeling requirements of these FMVSS and regulations.

FMVSS No. 105, "Hydraulic and electric brake systems" and FMVSS No. 135, "Light vehicle brake systems," require that each vehicle shall have a brake fluid warning statement in letters at least one-eighth of an inch high on the master cylinder reservoirs and located so as to be visible by direct view.

FMVSS No. 205, "Glazing materials," provides labeling requirements for glazing and motor vehicle manufacturers. In accordance with the standard, NHTSA requires each new motor vehicle glazing manufacturer to request and be assigned a unique mark or number. This number is then used by the manufacturer as their unique company identification on their self-certification label on each piece of motor vehicle glazing. As part of that certification label, the company must identify with the simple two or three digit number assigned by the agency and the model of the glazing. In addition to these requirements, which apply to all glazing, certain specialty glazing items, such as standee windows in buses, roof openings, and interior partitions made of plastic require that the manufacturer affix a removable label to each item. The label specifies cleaning instructions, which will minimize the loss of transparency. Other information may be provided by the manufacturer but is not required.

FMVSS No. 209, "Seat belt assemblies," requires safety belts to be labeled with the year of manufacture, the model, and the name or trademark of the manufacturer (S4.1(j)). Additionally replacement safety belts that are for use only in specifically stated motor vehicles must have labels or accompanying instruction sheets to specify the applicable vehicle models and seating positions (S4.1(k)). All other replacement belts are required to be accompanied by an installation instruction sheet (S4.1(k)).

Seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position/model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle; this is not a common practice.

Part 567, "Certification," requires each manufacturer or distributor of motor vehicles to furnish to the dealer, or distributor of the vehicle, a certification that the vehicle meets all applicable FMVSS. This certification is required by that provision to be in the form of a label permanently affixed to the vehicle. Under 49 U.S.C. 32504, vehicle manufacturers are directed to make a similar certification with regard to bumper standards. To implement this requirement, NHTSA issued 49 CFR Part 567. The agency's regulations establish form and content requirements for the certification labels.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): NHTSA anticipates that approximately 25 new prime glazing manufactures per year will contact the agency and request a manufacturer identification number. These new glazing manufacturers must submit one letter, one time, identifying their company. In turn, the agency responds by assigning them a unique manufacturer number. For other collections in this notice, no response is necessary from manufacturers. These labels are only required to be placed on each master cylinder reservoir, each safety belt and every motor vehicle intended for retain sale in the United Sates. Therefore, the number of respondents is not applicable.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that all manufacturers will need a total of 74,096 hours to comply with these requirements, at a total annual cost of 1,481,920.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: December 27, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–33055 Filed 12–30–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board.

ACTION: 30-day notice of request for approval: Waybill Sample.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) has submitted a request to the Office of Management and Budget (OMB) for an extension of approval for the collection of the Waybill Sample. The Board previously published a notice about this collection in the **Federal Register** on June 29, 2010, at 75 FR 37,522. That notice allowed for a 60-day public review and comment period. No comments were received. The Waybill Sample collection is described in detail below. Comments may now be submitted to OMB concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Waybill Sample.

OMB Control Number: 2140–0015.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Any regulated railroad that terminated at least 4,500 carloads on its line in any of the three preceding years or that terminated at least 5% of the total revenue carloads that terminated in a particular State.

Number of Respondents: 52.

Estimated Time per Response: 75 minutes.

Frequency: Six (6) respondents report monthly; 46 report quarterly.

Total Burden Hours (annually including all respondents): 320 hours.

Total "Non-hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States. Under 49 CFR 1244, a railroad is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, it terminated 4500 or more carloads, or it terminated at least 5% of the total revenue carloads that terminate in a particular State. The information in the Waybill Sample is used by the Board, other Federal and State agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop testimony in Board proceedings. The Board has authority to collect this information under 49 U.S.C. 11144 and 11145.

DATES: Comments on this information collection should be submitted by January 31, 2011.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board, Waybill Sample." These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Kimberly Nelson, Surface Transportation Board Desk Officer, by fax at (202) 395–6974; by mail at Room 10235, 725 17th Street, NW., Washington, DC 20503; or by e-mail at *OIRA_SUBMISSION@OMB.EOP.GOV.*

For Further Information or to Obtain a Copy of the STB Form, Contact: For further information regarding the Waybill Sample collection, contact Scott Decker at (202) 245–0330 or *deckers@stb.dot.gov,* or *Paul Aguiar at (202) 245–0323* or *paul.aguiar@stb.dot.gov.* [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(b) of the PRA, Federal agencies are required to provide, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period, through publication in the **Federal Register,** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: December 28, 2010.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–33079 Filed 12–30–10; 8:45 am]

BILLING CODE 4915–01–P

Reader Aids

Federal Register

Vol. 76, No. 1

Monday, January 3, 2011

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–250 3

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1061/P.L. 111–323

Hoh Indian Tribe Safe Homelands Act (Dec. 22, 2010; 124 Stat. 3532)

H.R. 2941/P.L. 111–324

To reauthorize and enhance Johanna's Law to increase public awareness and knowledge with respect to gynecologic cancers. (Dec. 22, 2010; 124 Stat. 3536)

H.R. 4337/P.L. 111–325

Regulated Investment Company Modernization Act of 2010 (Dec. 22, 2010; 124 Stat. 3537)

H.R. 5591/P.L. 111–326

To designate the airport traffic control tower located at Spokane International Airport in Spokane, Washington, as the "Ray Daves Airport Traffic Control Tower". (Dec. 22, 2010; 124 Stat. 3556)

H.R. 6198/P.L. 111–327

Bankruptcy Technical Corrections Act of 2010 (Dec. 22, 2010; 124 Stat. 3557)

H.R. 6278/P.L. 111–328

Kingman and Heritage Islands Act of 2010 (Dec. 22, 2010; 124 Stat. 3564)

H.R. 6473/P.L. 111–329

Airport and Airway Extension Act of 2010, Part IV (Dec. 22, 2010; 124 Stat. 3566)

H.R. 6516/P.L. 111–330

To make technical corrections to provisions of law enacted by the Coast Guard Authorization Act of 2010. (Dec. 22, 2010; 124 Stat. 3569)

S. 30/P.L. 111–331

Truth in Caller ID Act of 2009 (Dec. 22, 2010; 124 Stat. 3572)

S. 1275/P.L. 111–332

National Foundation on Fitness, Sports, and Nutrition Establishment Act (Dec. 22, 2010; 124 Stat. 3576)

S. 1405/P.L. 111–333

Longfellow House-Washington's Headquarters National Historic Site Designation Act (Dec. 22, 2010; 124 Stat. 3581)

S. 1448/P.L. 111–334

To amend the Act of August 9, 1955, to authorize the Coquille Indian Tribe, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, the Klamath Tribes, and the Burns Paiute Tribe to obtain 99-year lease authority for trust land. (Dec. 22, 2010; 124 Stat. 3582)

S. 1609/P.L. 111–335

Longline Catcher Processor Subsector Single Fishery Cooperative Act (Dec. 22, 2010; 124 Stat. 3583)

S. 2906/P.L. 111–336

To amend the Act of August 9, 1955, to modify a provision relating to leases involving certain Indian tribes. (Dec. 22, 2010; 124 Stat. 3587)

S. 3199/P.L. 111–337

Early Hearing Detection and Intervention Act of 2010 (Dec. 22, 2010; 124 Stat. 3588)

S. 3794/P.L. 111–338

Formerly Owned Resources for Veterans to Express Thanks for Service Act of 2010 (Dec. 22, 2010; 124 Stat. 3590)

S. 3860/P.L. 111–339

To require reports on the management of Arlington National Cemetery. (Dec. 22, 2010; 124 Stat. 3591)

S. 3984/P.L. 111–340

Museum and Library Services Act of 2010 (Dec. 22, 2010; 124 Stat. 3594)

S. 3998/P.L. 111–341

Criminal History Background Checks Pilot Extension Act of 2010 (Dec. 22, 2010; 124 Stat. 3606)

S. 4005/P.L. 111–342

Preserving Foreign Criminal Assets for Forfeiture Act of 2010 (Dec. 22, 2010; 124 Stat. 3607)

Last List January 23, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2011

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
January 3	Jan 18	Jan 24	Feb 2	Feb 7	Feb 17	Mar 4	Apr 4
January 4	Jan 19	Jan 25	Feb 3	Feb 8	Feb 18	Mar 7	Apr 4
January 5	Jan 20	Jan 26	Feb 4	Feb 9	Feb 22	Mar 7	Apr 5
January 6	Jan 21	Jan 27	Feb 7	Feb 10	Feb 22	Mar 7	Apr 6
January 7	Jan 24	Jan 28	Feb 7	Feb 11	Feb 22	Mar 8	Apr 7
January 10	Jan 25	Jan 31	Feb 9	Feb 14	Feb 24	Mar 11	Apr 11
January 11	Jan 26	Feb 1	Feb 10	Feb 15	Feb 25	Mar 14	Apr 11
January 12	Jan 27	Feb 2	Feb 11	Feb 16	Feb 28	Mar 14	Apr 12
January 13	Jan 28	Feb 3	Feb 14	Feb 17	Feb 28	Mar 14	Apr 13
January 14	Jan 31	Feb 4	Feb 14	Feb 18	Feb 28	Mar 15	Apr 14
January 18	Feb 2	Feb 8	Feb 17	Feb 22	Mar 4	Mar 21	Apr 18
January 19	Feb 3	Feb 9	Feb 18	Feb 23	Mar 7	Mar 21	Apr 19
January 20	Feb 4	Feb 10	Feb 22	Feb 24	Mar 7	Mar 21	Apr 20
January 21	Feb 7	Feb 11	Feb 22	Feb 25	Mar 7	Mar 22	Apr 21
January 24	Feb 8	Feb 14	Feb 23	Feb 28	Mar 10	Mar 25	Apr 25
January 25	Feb 9	Feb 15	Feb 24	Mar 1	Mar 11	Mar 28	Apr 25
January 26	Feb 10	Feb 16	Feb 25	Mar 2	Mar 14	Mar 28	Apr 26
January 27	Feb 11	Feb 17	Feb 28	Mar 3	Mar 14	Mar 28	Apr 27
January 28	Feb 14	Feb 18	Feb 28	Mar 4	Mar 14	Mar 29	Apr 28
January 31	Feb 15	Feb 22	Mar 2	Mar 7	Mar 17	Apr 1	May 2