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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, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13556 of November 4, 2010

Controlled Unclassified Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* This order establishes an open and uniform program for managing information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies, excluding information that is classified under Executive Order 13526 of December 29, 2009, or the Atomic Energy Act, as amended.

At present, executive departments and agencies (agencies) employ ad hoc, agency-specific policies, procedures, and markings to safeguard and control this information, such as information that involves privacy, security, proprietary business interests, and law enforcement investigations. This inefficient, confusing patchwork has resulted in inconsistent marking and safeguarding of documents, led to unclear or unnecessarily restrictive dissemination policies, and created impediments to authorized information sharing. The fact that these agency-specific policies are often hidden from public view has only aggravated these issues.

To address these problems, this order establishes a program for managing this information, hereinafter described as Controlled Unclassified Information, that emphasizes the openness and uniformity of Government-wide practice.

Sec. 2. *Controlled Unclassified Information (CUI).*

(a) The CUI categories and subcategories shall serve as exclusive designations for identifying unclassified information throughout the executive branch that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies.

(b) The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches.

(c) The National Archives and Records Administration shall serve as the Executive Agent to implement this order and oversee agency actions to ensure compliance with this order.

Sec. 3. *Review of Current Designations.*

(a) Each agency head shall, within 180 days of the date of this order:

(1) review all categories, subcategories, and markings used by the agency to designate unclassified information for safeguarding or dissemination controls; and

(2) submit to the Executive Agent a catalogue of proposed categories and subcategories of CUI, and proposed associated markings for information designated as CUI under section 2(a) of this order. This submission shall provide definitions for each proposed category and subcategory and identify the basis in law, regulation, or Government-wide policy for safeguarding or dissemination controls.

(b) If there is significant doubt about whether information should be designated as CUI, it shall not be so designated.

Sec. 4. *Development of CUI Categories and Policies.*

(a) On the basis of the submissions under section 3 of this order or future proposals, and in consultation with affected agencies, the Executive Agent shall, in a timely manner, approve categories and subcategories of CUI and associated markings to be applied uniformly throughout the executive branch and to become effective upon publication in the registry established under subsection (d) of this section. No unclassified information meeting the requirements of section 2(a) of this order shall be disapproved for inclusion as CUI, but the Executive Agent may resolve conflicts among categories and subcategories of CUI to achieve uniformity and may determine the markings to be used.

(b) The Executive Agent, in consultation with affected agencies, shall develop and issue such directives as are necessary to implement this order. Such directives shall be made available to the public and shall provide policies and procedures concerning marking, safeguarding, dissemination, and decontrol of CUI that, to the extent practicable and permitted by law, regulation, and Government-wide policies, shall remain consistent across categories and subcategories of CUI and throughout the executive branch. In developing such directives, appropriate consideration should be given to the report of the interagency Task Force on Controlled Unclassified Information published in August 2009. The Executive Agent shall issue initial directives for the implementation of this order within 180 days of the date of this order.

(c) The Executive Agent shall convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

(d) Within 1 year of the date of this order, the Executive Agent shall establish and maintain a public CUI registry reflecting authorized CUI categories and subcategories, associated markings, and applicable safeguarding, dissemination, and decontrol procedures.

(e) If the Executive Agent and an agency cannot reach agreement on an issue related to the implementation of this order, that issue may be appealed to the President through the Director of the Office of Management and Budget.

(f) In performing its functions under this order, the Executive Agent, in accordance with applicable law, shall consult with representatives of the public and State, local, tribal, and private sector partners on matters related to approving categories and subcategories of CUI and developing implementing directives issued by the Executive Agent pursuant to this order.

Sec. 5. *Implementation.*

(a) Within 180 days of the issuance of initial policies and procedures by the Executive Agent in accordance with section 4(b) of this order, each agency that originates or handles CUI shall provide the Executive Agent with a proposed plan for compliance with the requirements of this order, including the establishment of interim target dates.

(b) After a review of agency plans, and in consultation with affected agencies and the Office of Management and Budget, the Executive Agent shall establish deadlines for phased implementation by agencies.

(c) In each of the first 5 years following the date of this order and biennially thereafter, the Executive Agent shall publish a report on the status of agency implementation of this order.

Sec. 6. *General Provisions.*

(a) This order shall be implemented in a manner consistent with:

(1) applicable law, including protections of confidentiality and privacy rights;

(2) the statutory authority of the heads of agencies, including authorities related to the protection of information provided by the private sector to the Federal Government; and

(3) applicable Government-wide standards and guidelines issued by the National Institute of Standards and Technology, and applicable policies established by the Office of Management and Budget.

(b) The Director of National Intelligence (Director), with respect to the Intelligence Community and after consultation with the heads of affected agencies, may issue such policy directives and guidelines as the Director deems necessary to implement this order with respect to intelligence and intelligence-related information. Procedures or other guidance issued by Intelligence Community element heads shall be in accordance with such policy directives or guidelines issued by the Director. Any such policy directives or guidelines issued by the Director shall be in accordance with this order and directives issued by the Executive Agent.

(c) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, and legislative proposals.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) This order shall be implemented subject to the availability of appropriations.

(f) The Attorney General, upon request by the head of an agency or the Executive Agent, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(g) The Presidential Memorandum of May 7, 2008, entitled "Designation and Sharing of Controlled Unclassified Information (CUI)" is hereby rescinded.

THE WHITE HOUSE,
November 4, 2010.

[FR Doc. 2010–28360
Filed 11–8–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Executive Order 13557 of November 4, 2010

Providing an Order of Succession Within the Department of Justice

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, the following officers, in the order listed, shall act as and perform the functions and duties of the office of Attorney General, during any period in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, and any officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

(a) United States Attorney for the Eastern District of Virginia;

(b) United States Attorney for the District of Minnesota; and

(c) United States Attorney for the District of Arizona.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this order in an acting capacity, by virtue of so serving, shall act as Attorney General pursuant to this order.

(b) No individual listed in section 1 shall act as Attorney General unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Attorney General.

Sec. 3. Executive Order 13481 of December 9, 2008, is revoked.

Sec. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
November 4, 2010.

[FR Doc. 2010–28365
Filed 11–8–10; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
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Tuesday, November 9, 2010

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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–FV–10–0031; FV10–983–1 FIR]

Pistachios Grown in California, Arizona, and New Mexico; Modification of the Aflatoxin Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that modified the aflatoxin sampling and testing regulations prescribed under the California, Arizona, and New Mexico pistachio marketing order (order). The interim rule streamlined the aflatoxin sampling and testing procedures under the order's rules and regulations for pistachios to be shipped for domestic human consumption while maintaining sufficient aflatoxin controls. These changes are expected to reduce handler operating costs by providing a uniform and consistent aflatoxin sampling and testing procedure for pistachios shipped to all market destinations.

DATES: *Effective Date:* November 10, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Ricci, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (559) 487–5901, *Fax:* (559) 487–5906, or *E-mail: Andrea.Ricci@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 983, as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of pistachios grown in California, Arizona, and New Mexico is regulated by 7 CFR part 983. Prior to this change, pistachios for shipment to domestic markets were subject to different aflatoxin sampling and testing procedures than pistachios for shipment to certain export markets. This rule continues in effect an interim rule modifying the aflatoxin sampling and testing procedures to provide consistent and uniform procedures for pistachios regardless of market destination. These changes are intended to streamline handler operating procedures and reduce operating costs.

The specific changes modify the sampling procedure detailing how the samples will be created and analyzed, depending on the size of the pistachio lots. They also specify how the lots are certified based upon the aflatoxin levels found in the samples. Finally, the term "Chromatograph" is changed to "Chromatography" and unnecessary language was removed.

In an interim rule published in the **Federal Register** on July 23, 2010, and effective on July 24, 2010, (75 FR 43045, Doc. No. AMS–FV–10–0031, FV10–983–1 IR), § 983.150 (a), (d)(2), (d)(3), (d)(4), and (d)(6) were amended by removing unnecessary language from § 983.150(a), changing the creation and analysis of test samples in paragraph (d)(2), changing the term "Chromatograph" to "Chromatography" in paragraph (d)(3), changing the certification of lots based on aflatoxin levels in the samples in paragraph (d)(5), and removing the reference to sample #3 in paragraph (d)(6).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 29 handlers and 875 producers of pistachios in California, Arizona and New Mexico. Small business firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural producers have been defined as those with annual receipts of less than $750,000.

Currently, about 72 percent of the California handlers ship less than $7,000,000 worth of pistachios on an annual basis and would therefore be considered small business firms under the SBA definition. Based on acreage, production, and grower prices reported by the Committee, the average annual revenue for small handlers is approximately $1,721,911. The industry has estimated that one of the Arizona handlers and all three New Mexico handlers would also be considered small businesses.

Data provided by the Committee regarding the size of the 2009 California crop indicates that approximately 630 California growers had 350,000 pounds or less of assessable dry weight of pistachios. Using the most recent grower price of $2.04 per pound for pistachios, it is estimated that 81 percent of California producers had receipts of

approximately $714,000, which is less than $750,000, and thus would be considered small business according to the SBA definition. Although there is no official data available to date, as these states were recently added to the order and have not completed one full crop year for reporting purposes, the industry estimates that the majority of producers in Arizona and New Mexico would also be considered small businesses.

This rule continues in effect the action that modified the aflatoxin sampling and testing regulations currently prescribed under the California, Arizona and New Mexico pistachio order, as well as removed unnecessary language and corrected terminology. The changes to § 983.150 are expected to reduce handler operating costs by providing a uniform and consistent aflatoxin sampling and testing procedure for pistachios shipped to all market destinations. Authority for the change in the order's rules and regulations is provided in § 983.50.

This action is expected to benefit producers and handlers, regardless of size and regardless of the market they ship into, as it streamlines handler operations and increases marketing flexibility. Reducing the number of required samples, the number of aflatoxin analyses, and the total weight of the lot samples, while increasing the weight of the test samples for each lot is expected to result in an estimated annual savings to the industry of approximately $18,000, including reductions of $900 for sampling, $1,400 for testing, $12,750 for labor, and $3,750 in shipping costs for those small handlers that do not do testing on site.

This action will not impose any additional reporting or recordkeeping requirements on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the pistachio industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 21, 2010. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov* and type the following docket number into the keyword search section: FV10–983–1 IR. Follow the link provided in the "Results" section of this page.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, Paperwork Reduction Act (44 U.S.C. chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 43045, July 23, 2010) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Marketing agreements and orders, Pistachios, Reporting and recordkeeping requirements.

PART 983—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR part 983 that was published at 75 FR 43045 on July 23, 2010, is adopted as a final rule, without change.

Dated: November 3, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–28240 Filed 11–8–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0700; Directorate Identifier 2010–NM–123–AD; Amendment 39–16500; AD 2010–23–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

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

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition can result in early or late activation of the stick shaker and/or stick pusher.

These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 14, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 14, 2010.

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

FOR FURTHER INFORMATION CONTACT: Joseph Licata, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7361; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 27, 2010 (75 FR 43882). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition

can result in early or late activation of the stick shaker and/or stick pusher.

These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane. The required actions include an inspection to determine if certain AOA transducers are installed and replacement of affected transducers. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Air Line Pilots Association, International (ALPA), supports the NPRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 380 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $32,300, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–11 Bombardier, Inc.: Amendment 39–16500. Docket No. FAA–2010–0700; Directorate Identifier 2010–NM–123–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, equipped with Thales angle of attack transducers having part number (P/N) C16258AA.

Subject

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

Reason

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

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition can result in early or late activation of the stick shaker and/or stick pusher.

These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane.

Compliance

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

Inspection

(g) Within 750 flight hours after the effective date of this AD, inspect the serial number of each AOA transducer having P/N C16258AA to determine if the serial number is identified in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the AOA transducer can be conclusively determined from that review.

(1) If the serial number is not listed in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, no further action is

required by this AD other than compliance with paragraph (h) of this AD.

(2) If the serial number is listed in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, and has the suffix "C", no further action is required by this AD other than compliance with paragraph (h) of this AD.

(3) If the serial number is listed paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, and does not have the suffix "C", before further flight, replace the AOA transducer with a new or serviceable transducer, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010.

Note 1: To replace any AOA transducer, the replacement AOA transducer must either be outside of the affected serial numbers as identified in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, or have the suffix "C".

(h) As of the effective date of this AD, no AOA transducer having both a serial number and P/N C16258AA as identified in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, may be installed on any airplane unless the AOA transducer has been inspected by the manufacturer and identified with the suffix "C".

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(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

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–13, dated May 6, 2010; and Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Alert Service Bulletin A670BA–27–054,

Revision A, dated January 18, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on October 21, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28089 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0870; Directorate Identifier 2010–CE–045–AD; Amendment 39–16505; AD 2010–23–16]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 Airplanes

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

ACTION: Final rule.

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

It has been found the occurrences of failure of the Flow Control Shutoff Valve (FCSOV) in the closed position. Failure of the two valves (left and right) can cause the loss of the pneumatic source, and lead to loss of the cabin pressurization.

Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD.

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

DATES: This AD becomes effective December 14, 2010.

On December 14, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—P.O. Box: 38/2, BRASIL, *telephone:* ++55 12 3927–5383; *fax:* ++55 12 3927–2610; *E-mail: reliability.executive@embraer.com.br;* Internet: *http://www.embraer.com.br.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 1, 2010 (75 FR

53609). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrences of failure of the Flow Control Shutoff Valve (FCSOV) in the closed position. Failure of the two valves (left and right) can cause the loss of the pneumatic source, and lead to loss of the cabin pressurization.

Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD.

The MCAI requires replacing both FCSOVs with new and improved FCSOVs. You may obtain further information by examining the MCAI in the AD docket

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 79 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $10,487 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $855,333, or $10,827 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–16 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16505; Docket No. FAA–2010–0870; Directorate Identifier 2010–CE–045–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 airplanes, serial numbers 50000005 through 50000118, 50000120, 50000122 through 50000126, 50000128, and 50000131, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 36: Pneumatic.

Reason

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

It has been found the occurrences of failure of the Flow Control Shutoff Valve (FCSOV) in the closed position. Failure of the two valves (left and right) can cause the loss of the pneumatic source, and lead to loss of the cabin pressurization.

Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD.

The MCAI requires replacing both FCSOVs with new and improved FCSOVs.

Actions and Compliance

(f) Unless already done, at the next scheduled maintenance check or within 12 months after December 14, 2010 (the effective date of this AD) or within 600 hours time-in-service after December 14, 2010 (the effective date of this AD), whichever occurs first, replace both flow control shutoff valves, part number (P/N) 1300230–13 and P/N 1300230–23, with P/N 1300230–15 and P/N 1300230–25. Do the replacements following

EMBRAER Phenom Service Bulletin 500–21–0001, dated December 9, 2009.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL—BRAZIL (ANAC) AD No. 2010–08–01, dated September 3, 2010; and EMBRAER Phenom Service Bulletin 500–21–0001, dated December 9, 2009, for related information.

Material Incorporated by Reference

(i) You must use EMBRAER Phenom Service Bulletin 500–21–0001, dated December 9, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—P.O. Box: 38/2, BRASIL, *telephone:* ++55 12 3927–5383; *fax:* ++55 12 3927–2610; *E-mail: reliability.executive@embraer.com.br;* Internet: *http://www.embraer.com.br.*

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

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

Issued in Kansas City, Missouri, on October 29, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27974 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0705; Directorate Identifier 2009–NM–206–AD; Amendment 39–16499; AD 2010–23–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; and Model DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires repetitive high frequency eddy current inspections to detect cracking in the vertical radius (also known as the "vertical leg") of the upper cap of the center wing rear spar, and repair if necessary. This new AD expands the area to be inspected by including inspections to detect cracking of the horizontal flange of the upper cap of the left and right center wing rear spar, and repair if necessary. This new AD also adds certain airplanes to the applicability. This AD was prompted by reports of cracking in the vertical radius of the upper cap of the center wing rear spar, and the horizontal flange on the inboard side of the of the rear spar upper cap, which resulted from stress corrosion. We are issuing this AD to detect and correct cracking in the vertical leg or the horizontal flange of the upper cap of the left or right center wing rear spar, which could cause a possible fuel leak, damage to the wing skin, and structural failure of the upper cap, and result in reduced structural integrity of the airplane.

DATES: This AD is effective December 14, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 14, 2010.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness

directive (AD) 2004–23–11, Amendment 39–13866 (69 FR 65522, November 15, 2004). That AD applies to the specified products. The NPRM was published in the **Federal Register** on August 5, 2010 (75 FR 47242). That NPRM proposed to continue to require repetitive high frequency eddy current inspections to detect cracks in the vertical radius (also known as the "vertical leg") of the upper cap of the center wing rear spar, and repair if necessary. That NPRM also proposed to expand the area to be inspected by including inspections to detect cracking of the horizontal flange of the upper cap of the left and right center wing rear spar, and repair if necessary. In addition, that NPRM proposed to add certain airplanes to the applicability.

Comments

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

Conclusion

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

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

Costs of Compliance

There are approximately 510 airplanes of the affected design in the worldwide fleet. We estimate that 322 airplanes of U.S. registry will be affected by this AD. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	3	$85	$0	$255 per inspection cycle.	322	$82,110 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–23–11, Amendment 39–13866 (69 FR 65522, November 15, 2004), and adding the following new AD:

2010–23–10 McDonnell Douglas Corporation: Amendment 39–16499; Docket No. FAA–2010–0705; Directorate Identifier 2009–NM–206–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 14, 2010.

Affected ADs

(b) This AD supersedes AD 2004–23–11, Amendment 39–13866.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; certificated in any category; as identified in Boeing Service Bulletin DC9–57–223, Revision 1, dated August 13, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracking in the vertical radius (also known as the "vertical leg") of the upper cap of the center wing rear spar, and the horizontal flange on the inboard side of the rear spar upper cap, which resulted from stress corrosion. The Federal Aviation Administration is issuing this AD to detect and correct cracking in the vertical leg or the horizontal flange of the upper cap of the left or right center wing rear spar, which could cause a possible fuel leak, damage to the wing skin, and structural failure of the upper cap, and result in reduced structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2004–23–11, With Revised Service Information

Inspection

(g) For all airplanes except Model DC–9–15F airplanes, at the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a high frequency eddy current inspection to detect cracks in the vertical radius of the upper cap of the center wing rear spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–57–223, dated July 21, 2003; or Revision 1, dated August 13, 2009. After the effective date of this AD, only Revision 1 may be used.

(1) Before the accumulation of 25,000 total flight cycles.

(2) Within 15,000 flight cycles or 5 years after December 20, 2004 (the effective date of AD 2004–23–11), whichever occurs first.

Corrective Action

(h)(1) If no crack is found during any inspection required by paragraph (g) of this AD, then repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles or 5 years, whichever occurs first, until the initial inspection required by paragraph (i) of this AD is done.

(2) If any crack is found during the inspection required by paragraph (g) of this AD, before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

New Requirements of This AD

Inspection

(i) At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD: Do a high frequency eddy current inspection to detect cracking in the vertical leg (also known as the "vertical radius") and horizontal flange of the left and right rear spar upper cap, inboard and outboard sides, at the bulkhead at wing station Xcw=58.500, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–57–223, Revision 1, dated August 13, 2009. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles or 5 years, whichever occurs first. Accomplishment of the initial inspection required by paragraph (i) of this AD terminates the requirements of paragraphs (g) and (h)(1) of this AD.

(1) Before the accumulation of 25,000 total flight cycles.

(2) Within 15,000 flight cycles or 5 years after accomplishing the most recent high frequency eddy current inspection required by paragraph (g) of this AD, whichever occurs first.

Corrective Action

(j) If any cracking is found during any inspection required by paragraph (i) of this AD, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

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

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

(4) AMOCs approved previously in accordance with AD 2004–23–11, Amendment 39–13866, are approved as AMOCs for the corresponding provisions of paragraph (h)(2) of this AD.

Material Incorporated by Reference

(l) You must use Boeing Service Bulletin DC9–57–223, Revision 1, dated August 13, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on October 21, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28084 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0483; Directorate Identifier 2010–NM–065–AD; Amendment 39–16502; AD 2010–23–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Model 757 airplanes. This AD requires changing the lower fixed leading edge panel assemblies immediately outboard of the nacelles at slats 4 and 7. This AD results from reports of Model 757 airplanes in service that have drain holes and unsealed panel assemblies in the fixed leading edge adjacent to the inboard end of slats 4 and 7 that are too close to the hot portion of the engines. We are issuing this AD to prevent fuel leaking onto an engine and a consequent fire.

DATES: This AD is effective December 14, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 14, 2010.

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

Examining the AD Docket

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

is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Model 757 airplanes. That NPRM was published in the **Federal Register** on June 3, 2010 (75 FR 31329). That NPRM proposed to require changing the lower fixed leading edge panel assemblies immediately outboard of the nacelles at slats 4 and 7.

Comments

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

Support for Proposed AD

Boeing concurred with the contents of the proposed AD. FedEx, Continental Airlines, and American Airlines had no technical objection to changing the lower fixed leading edge panel assemblies immediately outboard of the nacelles at slats 4 and 7, as specified in the proposed AD.

Request To Correct Part Number of Washer

FedEx, Continental Airlines, and American Airlines requested that we correct the part number of a washer used in Figures 1 and 4 of Boeing Special Attention Service Bulletin 757–57–0070, dated January 27, 2010. The commenters stated that Boeing Service Bulletin Information Notice 757–57–0070 IN 01, dated March 17, 2010, corrects the part number of the washer, and that by including this correct part number in the proposed AD, requests for alternative methods of compliance (AMOC) will be reduced.

We agree with the request as stated. We have added the correct part number to paragraph (g) of this AD.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 697 airplanes of U.S. registry. We also estimate that it takes 9 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $533,205, or $765 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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–13 The Boeing Company: Amendment 39–16502. Docket No. FAA–2010–0483; Directorate Identifier 2010–NM–065–AD.

Effective Date

(a) This AD is effective December 14, 2010.

Affected ADs

(b) None.

Applicability

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

Subject

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

Unsafe Condition

(e) This AD results from reports of Model 757 airplanes in service that have drain holes and unsealed panel assemblies in the fixed leading edge adjacent to the inboard end of slats 4 and 7 that are too close to the hot portion of the engines. The Federal Aviation Administration is issuing this AD to prevent fuel leaking onto an engine and a consequent fire.

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.

Action

(g) Within 60 months after the effective date of this AD, change the lower fixed leading edge panel assemblies immediately outboard of the nacelles at slats 4 and 7, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0070, dated January 27, 2010; except, where the service bulletin specifies washer part number (P/N) NAS11490632J for the modification of the lower fixed leading edge panel assemblies, this AD requires installation of P/N NAS1149D0632J.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 757–57–0070, dated January 27, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on October 23, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28160 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0548; Directorate Identifier 2010–NM–041–AD; Amendment 39–16497; AD 2010–23–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 Airplanes

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

ACTION: Final rule.

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

Following five reported cases of balance washer screw failure on similar RATs [ram air turbines]/air driven generators installed on other aircraft types, an investigation * * * determined that a specific batch of the screws had a metallographic non-conformity that increased their susceptibility to brittle fracture. * * *

Failure of a balance washer screw can result in loss of the related balance washer, with consequent turbine imbalance. Such imbalance could potentially result in RAT structural failure (including blade failure), loss of RAT electrical power and structural damage to the aircraft and, if deployment was activated by a dual engine shutdown, could also result in loss of hydraulic power for the flight controls [and consequent reduced ability of the flightcrew to maintain the safe flight and landing of the airplane].

* * * * *

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

DATES: This AD becomes effective December 14, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2010.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 4, 2010 (75 FR 31731). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Following five reported cases of balance washer screw failure on similar RATs [ram air turbine]/air driven generators installed on other aircraft types, an investigation by Hamilton Sundstrand determined that a specific batch of the screws had a metallographic non-conformity that increased their susceptibility to brittle fracture. Subsequently, it was established that 187 RATs [Part Number (P/N) GL456–1101–7 and Hamilton Sundstrand P/Ns in the 762826 series] had non-conforming screws installed either during production or possibly during maintenance or repair at Hamilton Sundstrand repair stations.

Failure of a balance washer screw can result in loss of the related balance washer, with consequent turbine imbalance. Such imbalance could potentially result in RAT structural failure (including blade failure), loss of RAT electrical power and structural damage to the aircraft and, if deployment was activated by a dual engine shutdown, could also result in loss of hydraulic power for the flight controls [and consequent reduced ability of the flightcrew to maintain the safe flight and landing of the airplane].

This [Canadian] directive mandates checking of the RAT and replacing the balance washer screws, if required. It also prohibits future installation of unmodified RATs.

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

Actions Since NPRM Was Issued

We have determined that this AD should refer to the latest service information. We have reviewed Bombardier Service Bulletin 700–1A11–24–014, Revision 02, dated March 15, 2010; and Bombardier Service Bulletin 700–24–075, Revision 02, dated March 15, 2010; which introduce minor changes, but do not add any additional work. We have revised this final rule to include the latest version of the applicable Bombardier service information and to provide credit for work done before the effective date of this AD, in accordance with the previous revisions of the service information.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 115 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,775, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–08 Bombardier, Inc.: Amendment 39–16497. Docket No. FAA–2010–0548; Directorate Identifier 2010–NM–041–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, serial numbers 9002 and subsequent; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

Following five reported cases of balance washer screw failure on similar RATs [ram air turbines]/air driven generators installed on other aircraft types, an investigation by Hamilton Sundstrand determined that a specific batch of the screws had a metallographic non-conformity that increased their susceptibility to brittle fracture. Subsequently, it was established that 187 RATs [Part Number (P/N) GL456–1101–7 and Hamilton Sundstrand P/Ns in the 762826 series] had non-conforming screws installed either during production or possibly during maintenance or repair at Hamilton Sundstrand repair stations.

Failure of a balance washer screw can result in loss of the related balance washer, with consequent turbine imbalance. Such imbalance could potentially result in RAT structural failure (including blade failure), loss of RAT electrical power and structural damage to the aircraft and, if deployment was activated by a dual engine shutdown, could also result in loss of hydraulic power for the flight controls [and consequent reduced ability of the flightcrew to maintain the safe flight and landing of the airplane].

This [Canadian] directive mandates checking of the RAT and replacing the balance washer screws, if required. It also prohibits future installation of unmodified RATs.

Compliance

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

Inspection

(g) For airplanes having serial numbers 9002 through 9380 inclusive: At the earliest of the times identified in paragraphs (g)(1), (g)(2), (g)(3) and (g)(4) of this AD, inspect to determine the serial number of the installed ram air turbine (RAT), in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD. This inspection may be conducted visually, which requires lowering the RAT. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the RAT can be conclusively determined from that review.

(1) Within 500 flight hours or 24 months after the effective date of this AD, whichever occurs first; or

(2) Prior to the next in-flight or on-ground functional test of the RAT, whichever occurs first after the effective date of this AD; or

(3) Prior to the next in-flight or on-ground operational test of the RAT, whichever occurs first after the effective date of this AD; or

(4) Prior to the next scheduled RAT in-flight deployment.

(h) If the RAT serial number, as determined in paragraph (g) of this AD, is not listed in paragraph 1.A of the applicable service bulletin listed in Table 1 of this AD, no further action is required by this AD, except as required by paragraph (j) of this AD.

TABLE 1—SERVICE BULLETINS

Model—	Bombardier Service Bulletin—	Revision—	Dated—
BD–700–1A11	700–1A11–24–014	02	March 15, 2010.
BD–700–1A10	700–24–075	02	March 15, 2010.

(i) If the RAT serial number, determined in paragraph (g) of this AD, is listed in paragraph 1.A. of the applicable service bulletin listed in Table 1 of this AD, before further flight, inspect to determine if the symbol "24–7" is marked on the RAT identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the symbol "24–7" mark can be conclusively determined from that review.

(1) If the symbol "24–7" is marked on the RAT identification plate, the balance washer screws have already been replaced and no further action is required by this AD, except as required by paragraph (j) of this AD.

(2) If the symbol "24–7" is not marked on the RAT identification plate, before further flight, replace all balance washer screws with new balance washer screws, part number MS24667–14, and mark the RAT identification plate with the symbol "24–7," in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

(j) For all airplanes: As of the effective date of this AD, no person may install on any airplane a replacement or spare RAT (P/N GL456–1101–7; Hamilton Sundstrand P/Ns in the 762826 series) having one of the S/Ns listed in paragraph 1.A. of the applicable service bulletin listed in Table 1 of this AD unless the balance washer screws have already been replaced and the symbol "24–7" is marked on the RAT identification plate.

Credit for Actions Accomplished in Accordance With Previous Service Information

(k) Actions accomplished before the effective date of this AD, in accordance with the applicable service bulletin listed in Table 2 of this AD, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 2—CREDIT SERVICE BULLETINS

Model—	Bombardier Service Bulletin—	Revision—	Dated—
BD–700–1A11	700–1A11–24–014	01	July 15, 2009.
BD–700–1A10	700–24–075	01	July 15, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although Canadian Airworthiness Directive CF–2010–01, dated January 18, 2010, recommends accomplishing the visual inspection prior to the next scheduled in-flight operational test of the RAT, we have determined that interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet in light of the degree of urgency associated with the subject unsafe condition. This difference has been coordinated with Transport Canada Civil Aviation (TCCA).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(m) Refer to MCAI TCCA Airworthiness Directive CF–2010–01, dated January 18, 2010; and Bombardier Service Bulletins 700–24–075, Revision 02, dated March 15, 2010, and 700–1A11–24–014, Revision 02, dated March 15, 2010; for related information.

Material Incorporated by Reference

(n) You must use Bombardier Service Bulletins 700–24–075, Revision 02, dated March 15, 2010; or Bombardier Service Bulletin 700–1A11–24–014, Revision 02, dated March 15, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington on October 21, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28174 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1102; Directorate Identifier 2010–NM–016–AD; Amendment 39–16507; AD 2010–23–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A380–800 Series Airplanes

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

ACTION: Final rule; request for comments.

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

During inspection in production and on in-service aircraft, a number of OverHeat Detection System (OHDS) installation non-conformities have been identified along the bleed air ducting.

Some installation issues which may lead to a degraded leak detection capability have been reported. In case of hot air leakage, the potential degradation of the OHDS would not allow preventing damages to structure or components, and therefore could lead to an unsafe condition.

* * * * *

Nonconforming installation or a failure of the OHDS could allow undetected leakage of bleed air from the hot engine/auxiliary power unit causing damage to the airplane structure and various airplane components and systems. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 24, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 24, 2010.

We must receive comments on this AD by December 27, 2010.

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.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0265, dated December 16, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During inspection in production and on in-service aircraft, a number of OverHeat Detection System (OHDS) installation non-conformities have been identified along the bleed air ducting.

Some installation issues which may lead to a degraded leak detection capability have been reported. In case of hot air leakage, the potential degradation of the OHDS would not allow preventing damages to structure or components, and therefore could lead to an unsafe condition.

To ensure that in-service aeroplanes are free of such non-conformities, EASA AD 2009–0066 required an inspection of the OHDS installation along the bleed air ducting and, in case of findings, to bring back the installation into the compliant configuration. That AD required a complete inspection for some MSN, and a partial inspection for MSN 15, 20 and 22. This partial inspection has now been assessed to be insufficient to cover the unsafe condition.

This [EASA] AD, which supersedes EASA AD 2009–0066, requires to perform:

- An additional inspection on MSN 15, 20 and 22 to render it complete, and
- A complete inspection on additional MSN.

Nonconforming installation or a failure of the OHDS could allow undetected leakage of bleed air from the hot engine/auxiliary power unit causing damage to the airplane structure and various airplane components and systems. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A380–36–8009, including Service Bulletin Report Sheet, dated December 7, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies.

Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1102; Directorate Identifier 2010–NM–016–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–18 Airbus: Amendment 39–16507. Docket No. FAA–2010–1102; Directorate Identifier 2010–NM–016–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 24, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A380–841, –842, and –861 airplanes, certificated in any category, with serial numbers 15, 17, 19, 20, 21, and 22.

Subject

(d) Air Transport Association (ATA) of America Code 36: Pneumatic.

Reason

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

During inspection in production and on in-service aircraft, a number of OverHeat Detection System (OHDS) installation non-conformities have been identified along the bleed air ducting.

Some installation issues which may lead to a degraded leak detection capability have been reported. In case of hot air leakage, the potential degradation of the OHDS would not allow preventing damages to structure or components, and therefore could lead to an unsafe condition.

* * * * *

Nonconforming installation or a failure of the OHDS could allow undetected leakage of bleed air from the hot engine/auxiliary power unit causing damage to the airplane structure and various airplane components and systems.

Compliance

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

Inspection and Corrective Actions

(g) Within 3 months after the effective date of this AD: Do a one-time detailed visual inspection to ensure the correct installation of the OHDS sensing elements and insulation muffs, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A380–36–8009, including Service Bulletin Report Sheet, dated December 7, 2009.

(h) If, during any inspection required by paragraph (g) of this AD, any sensing element or insulation muff is found to have been installed incorrectly, before further flight, bring the installation into compliant configuration, in accordance with Airbus Mandatory Service Bulletin A380–36–8009, dated December 7, 2009.

(i) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 33 33; fax +33 5 61 93 28 06; e-mail *sb.reporting@airbus.com;* Internet *http://www.airbus.com*, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date 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

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind

Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* 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

(k) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0265, dated December 16, 2009, and Airbus Mandatory Service Bulletin A380–36–8009, dated December 7, 2009, for related information.

Material Incorporated by Reference

(l) You must use Airbus Mandatory Service Bulletin A380–36–8009, including Service Bulletin Report Sheet, dated December 7, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—EANA (Airworthiness Office); 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 562 110 253; Fax +33 562 110 307; e-mail *account.airworth-A380@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on October 26, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28166 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1106; Directorate Identifier 2010–NM–237–AD; Amendment 39–16508; AD 2010–23–19]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule; request for comments.

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

Two cases of main landing gear (MLG) failure to fully extend have been reported. An MLG failing to extend may result in an unsafe asymmetric landing configuration.

Preliminary investigation has shown that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening.

* * * * *

The unsafe condition is possible loss of controllability of the airplane during landing. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 24, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 24, 2010.

We must receive comments on this AD by December 27, 2010.

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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–36, dated October 18, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Two cases of main landing gear (MLG) failure to fully extend have been reported. An MLG failing to extend may result in an unsafe asymmetric landing configuration.

Preliminary investigation has shown that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening.

This [Canadian airworthiness] directive mandates [repetitive detailed] inspection[s for damage] and rectification, as required, of the MLG fairing and seal, MLG door, and adjacent structures.

The unsafe condition is possible loss of controllability of the airplane during landing. Damage includes the following:

- Wear lines, cracks, fraying, tears, and evidence of chafing of the rubber seal of the MLG fairing;
- Missing and broken rollers, loose and missing fasteners, and damaged and missing stops of the MLG inboard doors;

and damage along the edge of the MLG inboard door adjacent to the MLG fairing;

- Missing forward and aft stops, loose and missing fasteners of the MLG fairing; and damage along the edge of the MLG fairing adjacent to the MLG door; and
- Missing stops, loose and missing fasteners, and missing wedges of the stops and wedge on the forward and aft spars.

Rectification (*i.e.,* corrective actions) includes replacing the rubber seal or removing the MLG inboard door, and contacting Bombardier for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA–32–030, Revision A, including Appendix A, dated October 22, 2010. 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the main landing gear may fail to extend, which could result in an asymmetric landing configuration. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1106; Directorate Identifier 2010–NM–237–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–19 Bombardier, Inc.: Amendment 39–16508. Docket No. FAA–2010–1106; Directorate Identifier 2010–NM–237–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 24, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier, Inc. airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, having serial numbers (S/Ns) 10003 and subsequent.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, having S/Ns 15001 and subsequent.

Subject

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

Reason

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

Two cases of main landing gear (MLG) failure to fully extend have been reported. An MLG failing to extend may result in an unsafe asymmetric landing configuration.

Preliminary investigation has shown that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening.

* * * * *

The unsafe condition is possible loss of controllability of the airplane during landing.

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.

Repetitive Inspections and Corrective Actions

(g) For airplanes having S/Ns 10003 to 10313 inclusive, 15001 to 15238 inclusive, and 15240 to 15255 inclusive: Within 50 flight cycles after the effective date of this AD, do the inspections specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with "PART A—Inspection of the MLG Inboard Doors, MLG Fairing and Adjacent Structure" of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010. Repeat the inspections thereafter at intervals not to exceed 600 flight hours.

(1) Do a detailed inspection for damage (including wear lines, cracks, fraying, tears, and evidence of chafing) of the rubber seal of the MLG fairing.

(2) Do a detailed inspection for damage (including missing and broken rollers, loose and missing fasteners, damaged and missing stops) of the MLG inboard doors, and damage along the edge of the MLG inboard door adjacent to the MLG fairing.

(3) Do a detailed inspection of the MLG fairing for damage (including missing forward and aft stops, loose and missing fasteners), and damage along the edge of the MLG fairing adjacent to the MLG door.

(4) Do a detailed inspection for damage (including missing stops, loose and missing fasteners, and missing wedges) of the stops and wedge on the forward and aft spars.

(h) For airplanes not identified in paragraph (g) of this AD: Within 600 flight hours after the effective date of this AD, do the inspections specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, in accordance with "PART A—Inspection of the MLG Inboard Doors, MLG Fairing and Adjacent Structure" of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010. Repeat the inspections thereafter at intervals not to exceed 600 flight hours.

(1) Do a detailed inspection for damage (including wear lines, cracks, fraying, tears, and evidence of chafing) of the rubber seal of the MLG fairing.

(2) Do a detailed inspection for damage (including missing and broken rollers, loose and missing fasteners, damaged and missing stops) of the MLG inboard doors, and damage along the edge of the MLG inboard door adjacent to the MLG fairing.

(3) Do a detailed inspection of the MLG fairing for damage (including missing forward and aft stops, loose and missing fasteners), and damage along the edge of the MLG fairing adjacent to the MLG door.

(4) Do a detailed inspection for damage (including missing stops, loose and missing fasteners, and missing wedges) of the stops and wedge on the forward and aft spars.

(i) If damage to only the rubber seal on the MLG fairing is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, do either action in paragraph (i)(1) or (i)(2) of this AD.

(1) Replace the rubber seal on the MLG fairing with a new rubber seal, in accordance with "PART B—Replacement of the Forward Rubber Seal on the MLG Fairing" of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010.

(2) Remove the MLG inboard door, in accordance with "PART C—Removal of MLG Inboard Door" of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010. For airplanes on which the MLG inboard door is re-installed, do the installation of the MLG inboard door in accordance with "PART D—Installation of MLG Inboard Door" of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010.

(j) If damage other than the damage identified in paragraph (i) of this AD is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, contact the Bombardier Regional Aircraft Customer Response Center for repair instructions and do the repair.

(k) Submit a report of the positive findings of the initial inspection required by paragraph (g) or (h), as applicable, of this AD to Bombardier, at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the information specified in Appendix A of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Actions accomplished before the effective date of this AD according to Bombardier Alert Service Bulletin A670BA–32–030, dated October 18, 2010, are considered acceptable for compliance with the corresponding action specified in 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

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(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

(n) Refer to MCAI Canadian Airworthiness Directive CF–2010–36, dated October 18, 2010; and Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010; for related information.

Material Incorporated by Reference

(o) You must use Bombardier Alert Service Bulletin A670BA–32–030, Revision A, including Appendix A, dated October 22, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on November 1, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28162 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0675; Directorate Identifier 2010–NM–061–AD; Amendment 39–16501; AD 2010–23–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –223F, –243, and –243F Airplanes, Model A330–300 Series Airplanes, and Model A340–200, A340–300, A340–500, and A340–600 Series Airplanes

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

ACTION: Final rule.

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

* * * * *

Investigation conducted by Thales on * * * probes revealed oil residue between the stator and the rotor parts of the AoA [angle of attack] vane position resolvers. This oil residue was due to incorrect cleaning of the machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise) causing lag of AoA vane movement.

Such condition could lead to discrepant AoA measurement. If not corrected, and if two or three AoA probes were simultaneously affected and provided wrong indications of the AoA to a similar extent, it could lead to a late activation of the angle of attack protection, which in combination with flight at high angle of attack would constitute an unsafe condition.

* * * * *

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

DATES: This AD becomes effective December 14, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2010.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 7, 2010 (75 FR 38947). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During Airbus Final Assembly Line reception flight tests, AoA [angle of attack] data from two different aeroplanes were found inaccurate. Inaccuracy was confirmed by flight data analysis.

Investigation conducted by Thales on the removed probes revealed oil residue between the stator and the rotor parts of the AoA vane position resolvers. This oil residue was due to incorrect cleaning of the machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise) causing lag of AoA vane movement.

Such condition could lead to discrepant AoA measurement. If not corrected, and if two or three AoA probes were simultaneously affected and provided wrong indications of the AoA to a similar extent, it could lead to a late activation of the angle of attack protection, which in combination with flight at high angle of attack would constitute an unsafe condition.

Therefore, this [European Aviation Safety Agency (EASA)] AD requires a one time inspection of the Thales Avionics AoA probe P/N [part number] C16291AA in order to identify the suspect parts and to remove them from service.

This [EASA] AD revision is issued to specify that the identification of the affected AoA probes is also possible in accordance with aeroplane maintenance records data analysis.

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

Comments

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

Airplane Models Certificated Since the NPRM Was Published

In August 2010, after the NPRM was published, the FAA type-certificated two new Airbus models: Models A330–223F and –243F, and we find that those models are also subject to the unsafe condition identified this AD action. We have added those models to the subject heading on page 1 and to paragraph (c)(1) of this AD. Since no airplanes of those models are presently on the U.S. Register, additional notice and opportunity for public comment on that topic before issuing this AD are unnecessary.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 44 products of U.S. registry. (There are currently no Model A340 airplanes on the U.S. Register.) We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–12 Airbus: Amendment 39–16501. Docket No. FAA–2010–0675; Directorate Identifier 2010–NM–061–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342 and A330–343 airplanes, certificated in any category; all manufacturer serial numbers, equipped with Thales Avionics angle of attack (AoA) probes having part number (P/N) C16291AA.

(2) Airbus Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, and A340–642 airplanes, certificated in any category, all manufacturer serial numbers, equipped with Thales Avionics AoA probes having P/N C16291AA.

Subject

(d) Air Transport Association (ATA) of America Code 34: Navigation.

Reason

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

During Airbus Final Assembly Line reception flight tests, AoA data from two different aeroplanes were found inaccurate. Inaccuracy was confirmed by flight data analysis.

Investigation conducted by Thales on the removed probes revealed oil residue between the stator and the rotor parts of the AoA vane position resolvers. This oil residue was due to incorrect cleaning of the machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise) causing lag of AoA vane movement.

Such condition could lead to discrepant AoA measurement. If not corrected, and if two or three AoA probes were simultaneously affected and provided wrong indications of the AoA to a similar extent, it could lead to a late activation of the angle of attack protection, which in combination with flight at high angle of attack would constitute an unsafe condition.

Therefore, this [European Aviation Safety Agency (EASA)] AD requires a one time inspection of the Thales Avionics AoA probe P/N C16291AA in order to identify the suspect parts and to remove them from service.

This [EASA] AD revision is issued to specify that the identification of the affected AoA probes is also possible in accordance with aeroplane maintenance records data analysis.

Compliance

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

Inspection of AoA Probes

(g) Within 3 months after the effective date of this AD, perform a detailed visual inspection of the Thales Avionics AoA probes having P/N C16291AA for a serial number identification, in accordance with the Accomplishment Instructions of the applicable service information identified in Table 1 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the AoA probe can be conclusively determined from that review. If no AoA probe having P/N C16291AA and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, is identified during the inspection required by this paragraph of this AD, no further action is required by this AD, except for paragraph (i) of this AD.

TABLE 1—APPLICABLE SERVICE INFORMATION

Model	Document	Date
Model A330–200 and A330–300 series airplanes	Airbus Mandatory Service Bulletin A330–34–3232	January 20, 2010.
Model A340–200 and A340–300 series airplanes	Airbus Mandatory Service Bulletin A340–34–4239	January 20, 2010.
Model A340–500 and A340–600 series airplanes	Airbus Mandatory Service Bulletin A340–34–5072	January 20, 2010.

Replacement of Identified AoA Probes

(h) If the serial number of the AoA probe identified during the inspection required by paragraph (g) of this AD corresponds to a suspect AoA probe specified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, replace the affected AoA

probe with a serviceable AoA probe in accordance with one of the four options specified in and in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.

(1) For airplanes on which Airbus Modification 53368 (back-up speed scale) has been embodied in production or Airbus Service Bulletin A330–34–3213, Airbus Service Bulletin A340–34–4213, or Airbus Service Bulletin A340–34–5060, as applicable, has been embodied in service: Within 3 months after the effective date of this AD.

(2) For airplanes on which Airbus Modification 53368 (back-up speed scale) has not been embodied in production and Airbus Service Bulletin A330–34–3213, Airbus Service Bulletin A340–34–4213, or Airbus Service Bulletin A340–34–5060, as applicable, has not been embodied in service: Within 15 months after the effective date of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install, on any airplane, a Thales Avionics AoA probe having P/N C16291AA and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, unless the AoA is fitted with an inspection label stating that Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, has been accomplished.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: EASA Airworthiness Directive 2010–0016R1, dated February 9, 2010, does not include Models A330–223F and A330–243F. We find that those models need to be included in this AD action, and have coordinated this difference with EASA and Airbus.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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

(k) Refer to MCAI EASA Airworthiness Directive 2010–0016R1, dated February 9, 2010, and the service information identified in Table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE INFORMATION

Document	Revision	Date
Airbus Mandatory Service Bulletin A330–34–3232	Original	January 20, 2010.
Airbus Mandatory Service Bulletin A340–34–4239	Original	January 20, 2010.
Airbus Mandatory Service Bulletin A340–34–5072	Original	January 20, 2010.
Thales Service Bulletin C16291A–34–007	Revision 01	December 3, 2009.

Material Incorporated by Reference

(l) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For Airbus service information identified in this AD, contact Airbus SAS–Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.* For Thales Avionics service information identified in this AD, contact Thales—Aerospace Division, 105, avenue du General Eisenhower—BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 (0)5 61 19 65 00; fax +33 (0)5 61 19 66 00; Internet *http://www.thalesgroup.com/aerospace.*

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

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

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A330–34–3232, excluding Appendix 01	Original	January 20, 2010.
Airbus Mandatory Service Bulletin A340–34–4239, excluding Appendix 01	Original	January 20, 2010.
Airbus Mandatory Service Bulletin A340–34–5072, excluding Appendix 01	Original	January 20, 2010.
Thales Service Bulletin C16291A–34–007	Revision 01	December 3, 2009.

Issued in Renton, Washington, on October 22, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28087 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0397; Airspace Docket No. 10–AAL–7]

RIN 2120–AA66

Establishment and Amendment of Area Navigation (RNAV) Routes; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes two and modifies four Area Navigation (RNAV) routes in Alaska. T and Q-routes are Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment, or Distance Measuring Equipment (DME)/DME Inertial Reference Unit (IRU) navigation capability. The FAA is taking this action to enhance safety and improve the efficient use of the navigable airspace in Alaska.

DATES: Effective date 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

History

On June 7, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish and amend Area Navigation Routes in Alaska (75 FR 32120). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. This amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 establishing two RNAV T-routes, T–267 and T–271, and modifying three RNAV T-routes and one Q-route in Alaska. In response to comments received for a NPRM published February 12, 2009, (74 FR 7012), a new T-route (T–267) is established, which will circumvent the ocean near Kotzebue, AK, allowing IFR aircraft to fly closer to the shoreline. Also, one modified T-route continues south from Frederick's Point Non-directional Beacon, for connectivity between Juneau and Ketchikan, AK. Two T-routes are modified to allow lower minimum en route altitudes to be flown. Additionally, one Q-route is revised to provide a more direct route between Anchorage and Galena, AK. The RNAV routes described in this rule will enhance safety, and facilitate more flexible and efficient use of the navigable airspace for en route IFR operations in Alaska.

High Altitude RNAV routes are published in paragraph 2006, and Low Altitude RNAV routes are published in paragraph 6011, in FAA Order 7400.9U dated August 18, 2010, and effective September, 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action "under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes and amends RNAV routes in Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q–8 ANC to GAL [Revised]

GAL	VOR/DME	(Lat. 64°44′17″ N., long. 156°46′38″ W.)
ANC	VOR/DME	(Lat. 61°09′03″ N., long. 150°12′24″ W.)

* * * * *

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–227 SYA to SCC [Modified]

SYA	VORTAC	(Lat. 52°43′06″ N., long. 174°03′44″ E.)
JANNT	WP	(Lat. 52°04′18″ N., long. 178°15′37″ W.)
BAERE	WP	(Lat. 52°12′12″ N., long. 176°08′09″ W.)
ALEUT	FIX	(Lat. 54°14′17″ N., long. 166°32′52″ W.)
MORDI	FIX	(Lat. 54°52′50″ N., long. 165°03′15″ W.)
GENFU	FIX	(Lat. 55°23′19″ N., long. 163°06′22″ W.)
BINAL	FIX	(Lat. 55°46′00″ N., long. 161°59′56″ W.)
PDN	NDB/DME	(Lat. 56°57′15″ N., long. 158°38′51″ W.)
BATTY	FIX	(Lat. 59°03′57″ N., long. 155°04′42″ W.)
AMOTT	FIX	(Lat. 60°53′56″ N., long. 151°21′46″ W.)
ANC	VOR/DME	(Lat. 61°09′03″ N., long. 150°12′24″ W.)
FAI	VORTAC	(Lat. 64°48′00″ N., long. 148°00′43″ W.)
SCC	VOR/DME	(Lat. 70°11′57″ N., long. 148°24′58″ W.)

* * * * * * *

T–266 CGL to ANN [Modified]

CGL	NDB	(Lat. 58°21′33″ N., long. 134°41′58″ W.)
FPN	NDB	(Lat. 56°47′32″ N., long. 132°49′16″ W.)
ANN	VOR/DME	(Lat. 55°03′37″ N., long. 131°34′42″ W.)

* * * * * * *

T–267 OME to OTZ [New]

OME	VOR/DME	(Lat. 64°29′06″ N., long. 165°15′11″ W.)
BALIN	FIX	(Lat. 64°33′55″ N., long. 161°34′32″ W.)
OTZ	VOR/DME	(Lat. 66°53′09″ N., long. 162°32′24″ W.)

* * * * * * *

T–271 CDB to AMOTT [New]

CDB	VORTAC	(Lat. 55°16′03″ N., long. 162°46′27″ W.)
BINAL	FIX	(Lat. 55°46′00″ N., long. 161°59′56″ W.)
AKN	VORTAC	(Lat. 58°43′29″ N., long. 156°45′08″ W.)
AMOTT	FIX	(Lat. 60°53′56″ N., long. 151°21′46″ W.)

* * * * * * *

T–273 FAI to ROCES [Modified]

FAI	VORTAC	(Lat. 64°48′00″ N., long. 148°00′43″ W.)
AYKID	FIX	(Lat. 65°50′58″ N., long. 147°16′34″ W.)
TUVVO	FIX	(Lat. 67°37′20″ N., long. 146°04′49″ W.)
ROCES	WP	(Lat. 70°08′34″ N., long. 144°08′16″ W.)

Issued in Washington, DC, on November 2, 2010.

Edith V. Parish,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2010–28192 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–63247; File No. S7–08–09]

RIN 3235–AK35

Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending for a limited period of time the compliance date for the amendments to Rule 201 and Rule 200(g) of Regulation SHO under the Securities Exchange Act of 1934 (“Exchange Act”). Rule 201 adopts a short sale-related circuit breaker that, if triggered, will impose a restriction on the prices at which securities may be sold short (“short sale price test restriction”). The amendments to Rule 200(g) provide that a broker-dealer may mark certain qualifying short sale orders “short exempt.” The Commission is extending the compliance date for the amendments to Rule 201 and Rule 200(g) to give certain exchanges additional time to modify their current procedures for conducting single-priced opening, reopening, and closing transactions for covered securities that have triggered Rule 201’s circuit breaker in a manner that is consistent with the goals and requirements of Rule 201. Further, the extended compliance period will give industry participants additional time for programming and testing for compliance with the requirements of the Rule.

DATES: The effective date for Rule 201 (17 CFR 242.201) and Rule 200(g) (17 CFR 242.200(g)) remains March 10, 2010. The compliance date for both Rules has been extended from November 10, 2010 to February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Josephine Tao, Assistant Director, or Angela Moudy, Attorney-Advisor, Division of Trading and Markets, at (202) 551–5720, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 26, 2010, the Commission adopted amendments to Rule 201 and Rule 200(g) of Regulation

SHO.[1] Rule 201 requires that a trading center establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day.[2] In addition, the Rule requires that the trading center establish, maintain, and enforce written policies and procedures reasonably designed to impose this short sale price test restriction for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[3] The amendments to Rule 200(g) provide that broker-dealers may mark certain short sale orders "short exempt."[4]

Commission staff has been working with the markets and their participants since Rule 201 was adopted to resolve operational issues relating to implementation of the Rule. As part of these efforts, we have become aware that certain exchanges require additional time to address their procedures for conducting single-priced opening, reopening, and closing transactions ("single-priced transactions") for covered securities that have triggered the Rule's circuit breaker. Specifically, we have been advised that certain exchanges may encounter difficulties in applying Rule 201, which uses the national best bid as a reference point, to their single-priced transactions. These transactions involve the queuing and ultimate execution of multiple orders at a single price, and the single equilibrium price determined through this process is based on orders on the exchange, without any reference to the national best bid at the time of execution. Due to potential operational concerns, we are providing additional time for exchanges that currently conduct single-priced transactions through a formalized and transparent process to address this issue in a manner that would be consistent with the requirements and goals of Rule 201's short sale price test restriction.[5]

In addition, we believe that an extended compliance period may benefit industry participants by providing more time for programming and testing for compliance with the Rule's requirements. We have been informed that there have been some delays in the programming process, due in part to certain information, which was necessary to effectively program for compliance with Rule 201, being provided by various parties, including exchanges and data vendors, on dates that were later than originally anticipated. As a result, we have been informed that there may be an increased risk of technical or market problems if full implementation of Rule 201 is required by November 10, 2010.

As a result of these considerations, and in order to avoid any potential adverse effects on the markets from implementation of Rule 201 under the circumstances, we have determined to extend the compliance date to February 28, 2011 because we understand that this would provide the exchanges and other industry participants with sufficient time to resolve the issues surrounding implementation of Rule 201.

II. Conclusion

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date set forth herein are impractical, unnecessary, or contrary to the public interest.[6] The Commission notes that the compliance date is a few days away, and that a limited extension of the compliance date will facilitate the orderly implementation of Rule 201. In light of this time constraint, full notice and comment could not be completed prior to the November 10, 2010 compliance date. All industry participants will receive additional time to comply with Rule 201 and Rule 200(g) beyond the compliance date originally set forth in the Rule 201 Adopting Release. Further, the Commission recognizes that it is imperative for industry participants to receive notice of the extended compliance date, and providing immediate effectiveness upon publication of this release will allow industry participants to adjust their implementation plans accordingly.[7]

The Commission identified certain costs and benefits associated with the amendments to Rule 201 and Rule 200(g) of Regulation SHO in the Rule 201 Adopting Release. The extension of the compliance date for the amendments to Rule 201 and Rule 200(g) of Regulation SHO will delay the benefits of the Rules, but the Commission believes that the limited extension is necessary and appropriate because it will provide (1) certain exchanges additional time to modify their current procedures for conducting single-priced transactions for covered securities that have triggered Rule 201's circuit breaker in a manner that is consistent with the goals and requirements of Rule 201, and (2) industry participants additional time for programming and testing for compliance with the requirements of Rule 201 and Rule 200(g). The extension also will delay the costs of complying with the amendments.[8] The Commission believes that the extension does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, because, as noted above, the extension will give exchanges additional time to modify certain of their current procedures, and industry participants additional time for programming and testing, in a manner that is consistent with the goals and requirements of the amendments to Rule 201 and Rule 200(g) of Regulation SHO.

By the Commission.

[1] Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release").

[2] *See* 17 CFR 242.201(b)(1)(i).

[3] *See* 17 CFR 242.201(b)(1)(ii).

[4] *See* 17 CFR 242.200(g)(2).

[5] A significant percentage of total trading volume can be executed in single-priced transactions. For example, one exchange executes approximately 25% of its total trading volume in its opening and closing transactions.

[6] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impractical, unnecessary, or contrary to the public interest"). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the Federal agency promulgating the rule determines"). Also, because the Regulatory Flexibility Act (5 U.S.C. 601–612) only requires agencies to prepare analyses when the Administrative Procedures Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

[7] The compliance date extensions set forth in this release are effective upon publication in the **Federal Register**. Section 553(d)(1) of the Administrative Procedure Act allows effective dates that are less than 30 days after publication for a "substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

[8] The Commission identified in the Rule 201 Adopting Release certain ongoing costs associated with the amendments to Rule 201 and Rule 200(g) of Regulation SHO. Because of the extension of the compliance date, such costs could be avoided from November 10, 2010 to February 28, 2011.

Dated: November 4, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–28327 Filed 11–8–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0977]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Upper Hack Bridge at mile 6.9, across the Hackensack River, at Secaucus, New Jersey. Under this temporary deviation the bridge may remain in the closed position for two days in November to facilitate bridge repairs.

DATES: This deviation is effective from 8 a.m. on November 18, 2010 through 6 p.m. on November 19, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0977 and are available online at *http://www.regulations.gov*, inserting USCG–2010–0977 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Upper Hack Bridge, across the Hackensack River at mile 6.9 has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(d).

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New Jersey Transit, requested a temporary deviation to facilitate necessary electrical system upgrades and asbestos removal at the bridge.

Under this temporary deviation the Upper Hack Bridge, mile 6.9, across the Hackensack River may remain in the closed position from 8 a.m. on November 18, 2010 through 6 p.m. on November 19, 2010. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: October 27, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–28204 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094–AA53

Interior Board of Land Appeals and Other Appeals Procedures

Correction

In rule document 2010–26200 beginning on page 64655 in the issue of Wednesday, October 20, 2010 make the following correction:

§ 4.400 [Corrected]

On page 64664, in § 4.400, in the second column, in the first and second lines, "provided in the Bureau decision under appeal" should read "provided in the Bureau or Office decision under appeal."

[FR Doc. C1–2010–26200 Filed 11–8–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8155]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance

with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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 rule involves no policies that have federalism implications under Executive Order 13132.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 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.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region II				
New York:				
Afton, Town of, Chenango County	361084	December 26, 1975, Emerg; October 15, 1981, Reg; November 26, 2010, Susp.	Nov. 26, 2010	Nov. 26, 2010.
Afton, Village of, Chenango County	360979	March 13, 1975, Emerg; October 15, 1981, Reg; November 26, 2010, Susp.	.....*do	do.
Bainbridge, Town of, Chenango County	361085	March 18, 1976, Emerg; November 18, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Bainbridge, Village of, Chenango County.	360158	December 4, 1974, Emerg; October 5, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Columbus, Town of, Chenango County	361086	November 18, 1975, Emerg; April 8, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Coventry, Town of, Chenango County ..	361375	September 20, 1976, Emerg; October 15, 1985, Reg; November 26, 2010, Susp.	.....do	do.
German, Town of, Chenango County ...	361587	November 18, 1983, Emerg; September 24, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Greene, Town of, Chenango County	361087	January 12, 1976, Emerg; August 3, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Greene, Village of, Chenango County ..	360159	March 4, 1977, Emerg; August 3, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Guilford, Town of, Chenango County	361088	March 4, 1976, Emerg; July 6, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Lincklaen, Town of, Chenango County	361376	May 14, 1976, Emerg; March 23, 1984, Reg; November 26, 2010, Susp.	.....do	do.
McDonough, Town of, Chenango County.	361377	March 26, 1976, Emerg; June 5, 1985, Reg; November 26, 2010, Susp.	.....do	do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
New Berlin, Town of, Chenango County	361303	December 10, 1975, Emerg; June 5, 1985, Reg; November 26, 2010, Susp.	.....do	do.
New Berlin, Village of, Chenango County.	360160	September 11, 1975, Emerg; November 4, 1983, Reg; November 26, 2010, Susp.	.....do	do.
North Norwich, Town of, Chenango County.	361089	May 25, 1976, Emerg; August 24, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Norwich, City of, Chenango County	360161	April 26, 1974, Emerg; December 18, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Norwich, Town of, Chenango County ...	360162	August 7, 1975, Emerg; November 15, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Otselic, Town of, Chenango County	361090	June 15, 1976, Emerg; June 5, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Oxford, Town of, Chenango County	361304	March 21, 1975, Emerg; August 24, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Oxford, Village of, Chenango County ...	360163	June 4, 1975, Emerg; September 10, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Pitcher, Town of, Chenango County	361092	September 26, 1975, Emerg; March 4, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Plymouth, Town of, Chenango County	361305	September 30, 1975, Emerg; November 4, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Preston, Town of, Chenango County	361306	December 27, 1976, Emerg; April 1, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Sherburne, Village of, Chenango County.	360164	August 18, 1975, Emerg; September 10, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Smithville, Town of, Chenango County	361040	April 17, 1980, Emerg; November 4, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Smyrna, Town of, Chenango County	361308	February 2, 1976, Emerg; September 24, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Smyrna, Village of, Chenango County ..	361378	November 12, 1975, Emerg; October 15, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Region III				
Pennsylvania:				
Barnett, Township of, Forest County	421643	March 7, 1977, Emerg; December 1, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Green, Township of, Forest County	421644	January 16, 1980, Emerg; June 19, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Harmony, Township of, Forest County	421645	August 14, 1975, Emerg; November 5, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Hickory, Township of, Forest County	421646	December 17, 1975, Emerg; November 19, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Howe, Township of, Forest County	421647	September 16, 1975, Emerg; June 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Jenks, Township of, Forest County	422422	November 1, 1976, Emerg; February 15, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Kingsley, Township of, Forest County ..	422423	February 25, 1977, Emerg; June 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Tionesta, Borough of, Forest County	421648	May 12, 1975, Emerg; November 5, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Tionesta, Township of, Forest County ..	420468	February 28, 1977, Emerg; February 15, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Region IV				
Alabama:				
Coosa County, Unincorporated Areas ..	010052	August 7, 1975, Emerg; August 15, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Goodwater, Town of, Coosa County	010387	March 25, 2008, Emerg; November 26, 2010, Reg; November 26, 2010, Susp.	.....do	do.
Mississippi:				
Abbeville, Town of, Lafayette County ...	280309	February 24, 2010, Emerg; November 26, 2010, Reg; November 26, 2010, Susp.	.....do	do.
Lafayette County, Unincorporated Areas.	280093	N/A, Emerg; December 8, 2006, Reg; November 26, 2010, Susp.	.....do	do.
Oxford, City of, Lafayette County	280094	August 30, 1973, Emerg; September 29, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Tennessee:				
Bledsoe County, Unincorporated Areas	470219	November 1, 2007, Emerg; March 1, 2008, Reg; November 26, 2010, Susp.	.....do	do.
Pikeville, City of, Bledsoe County	470011	September 10, 1975, Emerg; May 17, 1988, Reg; November 26, 2010, Susp.	.....do	do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region V				
Illinois:				
Brookport, City of, Massac County	170468	May 23, 1997, Emerg; November 26, 2010, Reg; November 26, 2010, Susp.	.....do	do.
Massac County, Unincorporated Areas	170467	July 25, 1975, Emerg; July 5, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Michigan:				
Bellevue, Village of, Eaton County	260566	August 20, 1975, Emerg; July 3, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Carmel, Township of, Eaton County	260682	June 11, 1976, Emerg; January 31, 1979, Reg; November 26, 2010, Susp.	.....do	do.
Charlotte, City of, Eaton County	260065	May 16, 1975, Emerg; July 2, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Delta, Charter Township of, Eaton County.	260066	December 5, 1974, Emerg; March 2, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Dimondale, Village of, Eaton County	260333	September 21, 1976, Emerg; September 30, 1980, Reg; November 26, 2010, Susp.	.....do	do.
Eaton Rapids, City of, Eaton County	260067	June 18, 1975, Emerg; October 15, 1982, Reg; November 26, 2010, Susp.	.....do	do.
Eaton Rapids, Township of, Eaton County.	260391	June 2, 1978, Emerg; December 15, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Grand Ledge, City of, Clinton and Eaton Counties.	260068	July 18, 1975, Emerg; January 2, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Olivet, City of, Eaton County	260069	September 3, 1975, Emerg; November 9, 1979, Reg; November 26, 2010, Susp.	.....do	do.
Oneida, Charter Township of, Eaton County.	260070	December 29, 1978, Emerg; July 16, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Potterville, City of, Eaton County	260711	March 9, 1978, Emerg; September 28, 1979, Reg; November 26, 2010, Susp.	.....do	do.
Windsor, Charter Township of, Eaton County.	260071	May 20, 1975, Emerg; January 2, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Minnesota:				
Balaton, City of, Lyon County	270553	July 26, 1974, Emerg; August 19, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Ghent, City of, Lyon County	270257	September 3, 1975, Emerg; June 8, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Lynd, City of, Lyon County	270584	November 8, 1974, Emerg; August 19, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Lyon County, Unincorporated Areas	270256	June 28, 1974, Emerg; June 1, 1998, Reg; November 26, 2010, Susp.	.....do	do.
Marshall, City of, Lyon County	270258	March 23, 1973, Emerg; September 30, 1977, Reg; November 26, 2010, Susp.	.....do	do.
Minneota, City of, Lyon County	270259	April 30, 1974, Emerg; April 6, 2000, Reg; November 26, 2010, Susp.	.....do	do.
Russell, City of, Lyon County	270600	January 30, 1976, Emerg; July 6, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Region VI				
Arkansas:				
Bellefonte, Town of, Boone County	050018	May 5, 1975, Emerg; November 1, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Bergman, Town of, Boone County	050385	June 27, 1975, Emerg; February 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Boone County, Unincorporated Areas	050016	November 1, 1989, Emerg; January 1, 1992, Reg; November 26, 2010, Susp.	.....do	do.
Clarksville, City of, Johnson County	050112	June 26, 1975, Emerg; September 30, 1982, Reg; November 26, 2010, Susp.	.....do	do.
Diamond City, City of, Boone County	050407	January 13, 1976, Emerg; February 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Harrison, City of, Boone County	050020	December 30, 1971, Emerg; July 16, 1980, Reg; November 26, 2010, Susp.	.....do	do.
Hartman, Town of, Johnson County	050251	November 10, 2009, Emerg; November 26, 2010, Reg; November 26, 2010, Susp.	.....do	do.
Lamar, City of, Johnson County	050113	April 3, 1975, Emerg; July 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Louisiana:				
Church Point, Town of, Acadia Parish	220002	June 23, 1975, Emerg; November 5, 1980, Reg; November 26, 2010, Susp.	.....do	do.
Crowley, City of, Acadia Parish	225195	August 27, 1971, Emerg; June 30, 1972, Reg; November 26, 2010, Susp.	.....do	do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Deridder, City of, Beauregard Parish	220027	September 9, 1974, Emerg; October 19, 1982, Reg; November 26, 2010, Susp.	.....do	do.
Duson, Town of, Acadia and Lafayette Parishes.	220104	November 11, 1975, Emerg; September 30, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Estherwood, Village of, Acadia Parish ..	220004	June 12, 1975, Emerg; February 4, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Iota, Town of, Acadia Parish	220005	January 21, 1975, Emerg; July 18, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Mermentau, Village of, Acadia Parish ...	220006	January 12, 1976, Emerg; March 2, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Merryville, Town of, Beauregard Parish	220028	November 1, 1974, Emerg; February 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Morse, Village of, Acadia Parish	220007	December 8, 1976, Emerg; April 15, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Rayne, City of, Acadia Parish	220008	August 27, 1974, Emerg; March 2, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Oklahoma:				
Adair County, Unincorporated Areas	400501	February 17, 1987, Emerg; April 1, 1988, Reg; November 26, 2010, Susp.	.....do	do.
Stillwell, City of, Adair County	400001	November 14, 1975, Emerg; August 4, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Texas:				
Moulton, City of, Lavaca County	480433	July 13, 1979, Emerg; March 4, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Wilson County, Unincorporated Areas ..	480230	January 10, 1974, Emerg; March 15, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Yoakum, City of, Dewitt and Lavaca Counties.	480434	October 8, 1981, Emerg; September 1, 1987, Reg; November 26, 2010, Susp.	.....do	do.
Region VII				
Missouri:				
Butler County, Unincorporated Areas ...	290044	April 26, 1984, Emerg; April 3, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Concordia, City of, Lafayette County	290745	December 17, 1975, Emerg; February 9, 1979, Reg; November 26, 2010, Susp.	.....do	do.
Emma, City of, Lafayette and Saline Counties.	290587	August 26, 1976, Emerg; March 25, 1977, Reg; November 26, 2010, Susp.	.....do	do.
Fisk, City of, Butler County	290045	August 8, 1975, Emerg; September 16, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Granby, City of, Newton County	290263	August 26, 1975, Emerg; July 3, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Lafayette County, Unincorporated Areas.	290812	June 20, 1983, Emerg; September 4, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Lexington, City of, Lafayette County	290707	February 17, 1995, Emerg; November 7, 2001, Reg; November 26, 2010, Susp.	.....do	do.
Neelyville, City of, Butler County	290046	July 3, 1975, Emerg; May 5, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Neosho, City of, Newton County	290265	April 22, 1975, Emerg; July 5, 1982, Reg; November 26, 2010, Susp.	.....do	do.
Odessa, City of, Lafayette County	290669	April 29, 1976, Emerg; April 11, 1979, Reg; November 26, 2010, Susp.	.....do	do.
Poplar Bluff, City of, Butler County	290047	July 29, 1975, Emerg; February 4, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Qulin, City of, Butler County	290048	September 10, 1975, Emerg; October 15, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Redings Mill, Village of, Newton County	290484	June 5, 1975, Emerg; March 4, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Saginaw, Village of, Newton County	290486	September 2, 1975, Emerg; September 4, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Seneca, City of, Newton County	290269	August 30, 1973, Emerg; March 15, 1977, Reg; November 26, 2010, Susp.	.....do	do.
Nebraska:				
Amherst, Village of, Buffalo County	310245	June 4, 1975, Emerg; September 27, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Avoca, Village of, Cass and Otoe Counties.	310247	August 3, 1979, Emerg; August 3, 1979, Reg; November 26, 2010, Susp.	.....do	do.
Buffalo County, Unincorporated Areas ..	310419	July 10, 1986, Emerg; March 1, 1990, Reg; November 26, 2010, Susp.	.....do	do.
Elm Creek, Village of, Buffalo County ...	310014	November 10, 1975, Emerg; August 19, 1987, Reg; November 26, 2010, Susp.	.....do	do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Gibbon, City of, Buffalo County	310015	June 25, 1975, Emerg; September 27, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Greenwood, Village of, Cass County	310374	June 30, 1977, Emerg; June 3, 1980, Reg; November 26, 2010, Susp.	.....do	do.
Kearney, City of, Buffalo County	310016	June 23, 1975, Emerg; July 5, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Murray, Village of, Cass County	310305	June 30, 1976, Emerg; January 5, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Nehawka, Village of, Cass County	310032	April 17, 1975, Emerg; February 15, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Pleasanton, Village of, Buffalo County	310017	May 6, 1975, Emerg; September 27, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Ravenna, City of, Buffalo County	310018	June 16, 1975, Emerg; September 4, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Shelton, Village of, Buffalo County	310019	October 30, 1975, Emerg; September 27, 1985, Reg; November 26, 2010, Susp.	.....do	do.
South Bend, Village of, Cass County	310034	July 20, 1984, Emerg; July 20, 1984, Reg; November 26, 2010, Susp.	.....do	do.
Union, Village of, Cass County	310035	March 11, 1975, Emerg; April 3, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Region IX				
California:				
Del Norte County, Unincorporated Areas.	065025	September 4, 1970, Emerg; January 24, 1983, Reg; November 26, 2010, Susp.	.....do	do.
Region X				
Idaho:				
Blaine County, Unincorporated Areas	165167	May 14, 1971, Emerg; March 16, 1981, Reg; November 26, 2010, Susp.	.....do	do.
Bellevue, City of, Blaine County	160021	May 29, 1975, Emerg; August 1, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Carey, City of, Blaine County	160234	N/A, Emerg; March 22, 2006, Reg; November 26, 2010, Susp.	.....do	do.
Hailey, City of, Blaine County	160022	May 28, 1974, Emerg; April 17, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Ketchum, City of, Blaine County	160023	May 9, 1974, Emerg; June 15, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Sun Valley, City of, Blaine County	160024	September 6, 1974, Emerg; April 17, 1978, Reg; November 26, 2010, Susp.	.....do	do.
Oregon:				
Columbia County, Unincorporated Areas.	410034	April 11, 1974, Emerg; August 16, 1988, Reg; November 26, 2010, Susp.	.....do	do.
Clatskanie, City of, Columbia County	410035	May 21, 1975, Emerg; September 29, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Columbia City, City of, Columbia County.	410036	December 27, 1974, Emerg; June 5, 1985, Reg; November 26, 2010, Susp.	.....do	do.
Portland, City of, Clackamas, Multnomah, and Washington counties.	410183	May 19, 1972, Emerg; October 15, 1980, Reg; November 26, 2010, Susp.	.....do	do.
Prescott, City of, Columbia County	410037	December 17, 1987, Emerg; August 16, 1988, Reg; November 26, 2010, Susp.	.....do	do.
Rainier, City of, Columbia County	410038	July 7, 1975, Emerg; August 16, 1988, Reg; November 26, 2010, Susp.	.....do	do.
Scappoose, City of, Columbia County	410039	October 15, 1974, Emerg; August 16, 1988, Reg; November 26, 2010, Susp.	.....do	do.
St. Helens, City of, Columbia County	410040	June 27, 1974, Emerg; September 29, 1986, Reg; November 26, 2010, Susp.	.....do	do.
Vernonia, City of, Columbia County	410041	April 26, 1974, Emerg; August 16, 1988, Reg; November 26, 2010, Susp.	.....do	do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 29, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–28206 Filed 11–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified
Unincorporated Areas of Siskiyou County, California Docket Nos.: FEMA–B–7762, FEMA–B–7795, and FEMA–B–1053				
California	Unincorporated Areas of Siskiyou County.	Oregon Slough	City of Montague and Unincorporated Siskiyou County corporate limits.	+2503
	.....	.....	Approximately 0.4 mile downstream of Ager Road.	+2515
	.....	.....	Approximately 325 feet downstream of Ager Road.	+2523
California	Unincorporated Areas of Siskiyou County.	Panther Creek (shallow flooding).	Shallow flooding areas between Squaw Valley Creek and McCloud River Railroad.	#1, #3
California	Unincorporated Areas of Siskiyou County.	Panther Creek (shallow flooding).	Approximately 1,200 feet southwest of the intersection of Squaw Valley Road and State Route 89 (flooding extends west towards Modoc Avenue).	#2

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified
California	Unincorporated Areas of Siskiyou County.	Panther Creek Overflow (shallow flooding).	Immediately south of and adjacent to State Route 89, starting near the intersection of Squaw Valley Road and State Route 89 (flooding encompasses portions of both sides of Squaw Valley Road for approximately 3,000 feet).	#2
California	Unincorporated Areas of Siskiyou County.	Squaw Valley Creek.	At the downstream side of Cemetery Road.	+3094
			Approximately 100 feet upstream of McCloud River Railroad.	+3403
California	Unincorporated Areas of Siskiyou County.	Squaw Valley Creek (shallow flooding).	Shallow flooding areas between Cemetery Road and McCloud River Railroad.	#1, #3

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

ADDRESSES

Unincorporated Areas of Siskiyou County

Maps are available for inspection at the Siskiyou County Public Health and Community Development Department, 806 South Main Street, Yreka, CA.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Cherokee County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1080			
Coosa River	Approximately 1,080 feet downstream of State Route 35 ..	+575	Town of Gaylesville.
	Approximately 2.0 miles upstream of State Route 35	+579	
Weiss Lake	Entire shoreline	+573	Town of Cedar Bluff.

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

ADDRESSES

Town of Cedar Bluff

Maps are available for inspection at 3420 Spring Street, Cedar Bluff, AL 35959.

Town of Gaylesville

Maps are available for inspection at 4740 Main Street, Gaylesville, AL 35973.

City and County of Honolulu, Hawaii Docket No.: FEMA–B–1076			
Pacific Ocean	Approximately 1,275 feet north of the intersection of Lihue Drive and Plantation Road.	∧1	City and County of Honolulu.
	Approximately 5,025 feet southeast of the intersection of Poipu Drive and Nawilliwilli Street.	∧81	
Pacific Ocean/Pearl Harbor	Approximately 700 feet east of the intersection of Wasp Boulevard and Lexington Boulevard.	#2	City and County of Honolulu.
	Approximately 600 feet south of the intersection of Lehua Avenue and Coral Avenue.	#2	
	Approximately 880 feet northwest of the intersection of Kamehameha Street and Kalaloa Street.	#1	
	Approximately 325 feet southeast of the intersection of Ibis Avenue and Heron Avenue.	#2	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 3,250 feet southwest of the intersection of Plantation Road and Waipio Point Access Road.	#2	
	Approximately 450 feet east of the intersection of 101st Street and Heron Avenue.	∧1	
	Approximately 1,775 feet southwest of the intersection of Signer Boulevard and 2nd Street.	∧11	
	Approximately 1,565 feet south of the intersection of Signer Boulevard and 2nd Street.	#2	

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

ADDRESSES

City and County of Honolulu
Maps are available for inspection at the Honolulu City and County Emergency Management Department, 650 South King Street, Honolulu, HI 96813.

Vermilion Parish, Louisiana, and Incorporated Areas
Docket Nos.: FEMA–B–7773 and FEMA–B–7786

Gulf of Mexico	Base Flood Elevation changes of 7 feet in the form of VE-Zones.	+7	Town of Gueydan.
Gulf of Mexico	Base Flood Elevation changes ranging from 9 to 11 feet in the form of AE- and VE-Zones.	+9–11	Town of Delcambre.
Gulf of Mexico	Base Flood Elevation changes ranging from 10 to 13 feet in the form of AE- and VE-Zones.	+10–13	Town of Erath.
Gulf of Mexico	Base Flood Elevations changes ranging from 11 to 18 feet in the form of AE- and VE-Zones.	+11–18	Unincorporated Areas of Vermilion Parish.
Gulf of Mexico	At the confluence of the Gulf of Mexico and Vermilion Bay	+15	Unincorporated Areas of Vermilion Parish.
	Entire coastline east of the intersection with Rollover Bayou.	+17	
Vermilion Bay	At the divergence from the Gulf of Mexico	+14	Unincorporated Areas of Vermilion Parish.
	At the confluence with the Gulf of Mexico	+15	

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

ADDRESSES

Town of Delcambre
Maps are available for inspection at 107 North Railroad Street, Delcambre, LA 70528.

Town of Erath
Maps are available for inspection at 115 West Edwards Street, Erath, LA 70533.

Town of Gueydan
Maps are available for inspection at 600 Main Street, Gueydan, LA 70542.

Unincorporated Areas of Vermilion Parish
Maps are available for inspection at 100 North State Street, Suite 200, Abbeville, LA 70510.

Ransom County, North Dakota, and Incorporated Areas
Docket No.: FEMA–B–1053

Sheyenne River	Approximately 1,064 feet upstream of the Richland County boundary.	+990	City of Fort Ransom, City of Lisbon, Unincorporated Areas of Ransom County.
	Approximately 7,465 feet downstream of State Highway 46.	+1160	

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

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

ADDRESSES

City of Fort Ransom
Maps are available for inspection at P.O. Box 17, Fort Ransom, ND 58033.

City of Lisbon
Maps are available for inspection at P.O. Box 1079, Lisbon, ND 58054.

Unincorporated Areas of Ransom County
Maps are available for inspection at 204 5th Avenue West, Lisbon, ND 58054.

Crawford County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1078

Sandusky River	Approximately 0.8 mile downstream of Gay Street	+970	Unincorporated Areas of Crawford County.
	Approximately 0.6 mile downstream of U.S. Route 30	+985	
Zuber Ditch	Approximately 0.6 mile upstream of the confluence with the Olentangy River.	+1131	Unincorporated Areas of Crawford County.
	Approximately 900 feet downstream of North Market Street.	+1131	

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

ADDRESSES

Unincorporated Areas of Crawford County
Maps are available for inspection at the Crawford County Administration Building, 112 East Mansfield Street, Bucyrus, OH 44820.

Gallia County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1083

Campaign Creek (backwater effects from Ohio River).	Approximately 640 feet upstream of Bulaville Pike	+571	Unincorporated Areas of Gallia County.
	Approximately 0.7 mile upstream of Bulaville Pike	+571	
Clear Fork (backwater effects from Ohio River).	At the confluence with Raccoon Creek	+566	Unincorporated Areas of Gallia County.
	Approximately 0.6 mile downstream of State Route 141	+566	
Little Swan Creek (backwater effects from Ohio River).	At the confluence with Swan Creek	+561	Unincorporated Areas of Gallia County.
	Approximately 0.7 mile upstream of the confluence with Swan Creek.	+561	
Raccoon Creek	Approximately 1.9 mile downstream of State Route 160 in the Village of Vinton.	+605	Unincorporated Areas of Gallia County, Village of Vinton.
	Approximately 0.8 mile upstream of State Route 160 in the Village of Vinton.	+613	
Raccoon Creek (backwater effects from Ohio River).	Approximately 0.6 mile upstream of the confluence with Little Raccoon Creek.	+566	Unincorporated Areas of Gallia County.
	Approximately 0.7 mile upstream of Lincoln Pike	+566	
Swan Creek (backwater effects from Ohio River).	Approximately 1,020 feet downstream of Swan Creek Road.	+561	Unincorporated Areas of Gallia County.
	Approximately 1,360 feet downstream of Peters Branch Road.	+561	

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

ADDRESSES

Unincorporated Areas of Gallia County
Maps are available for inspection at 111 Jackson Pike, Suite 1569, Gallipolis, OH 45631.

Village of Vinton
Maps are available for inspection at 111 Jackson Pike, Suite 1569, Gallipolis, OH 45631.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Huron County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1080			
East Branch Huron River	Approximately 50 feet downstream of Norfolk and Western Railroad.	+666	Unincorporated Areas of Huron County.
	Approximately 0.5 mile downstream of West Main Street ..	+672	
	Approximately 50 feet downstream of West Main Street ...	+674	
	Just downstream of State Route 61	+677	
Norwalk Creek	Just downstream of State Route 61	+677	Unincorporated Areas of Huron County.
	Approximately 1,800 feet upstream of State Route 61	+680	
Norwalk Creek	Approximately 700 feet downstream of Southwest Street ..	+688	City of Norwalk, Unincorporated Areas of Huron County.
	Approximately 400 feet downstream of East Elm Street	+709	

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

ADDRESSES

City of Norwalk
Maps are available for inspection at 38 Whittlesey Avenue, Norwalk, OH 44857.

Unincorporated Areas of Huron County
Maps are available for inspection at 8 Fair Road, Norwalk, OH 44857.

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

Dated: October 29, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–28227 Filed 11–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Baxter County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1064			
North Fork River	At the confluence with the White River	+398	City of Norfork, City of Salesville, Unincorporated Areas of Baxter County.
	Just downstream of State Highway 177	+398	
Tributary 1 to Dodd Creek	At the confluence with Dodd Creek	+785	City of Mountain Home.
	Approximately 505 feet upstream of Burnett Drive	+834	

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

ADDRESSES

City of Mountain Home
Maps are available for inspection at 720 South Hickory Street, Mountain Home, AR 72653.

City of Norfork
Maps are available for inspection at 49 City Hall Circle, Norfork, AR 72653.

City of Salesville
Maps are available for inspection at 46 Salesville Circle, Salesville, AR 72653.

Unincorporated Areas of Baxter County
Maps are available for inspection at the Baxter County Courthouse, 1 East 7th Street, Mountain Home, AR 72653.

Clare County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1069			
Budd Lake	Entire shoreline	+1114	City of Harrison, Township of Hayes.
Doc and Tom Lake	Entire shoreline	+1067	Township of Freeman.
Eight Point Lake	Entire shoreline	+1053	Township of Garfield.
Grass Lake	Entire shoreline	+1081	Township of Freeman.
Lake Shamrock	Entire shoreline	+826	City of Clare, Township of Grant.
Surrey Lake	Entire shoreline	+958	Township of Surrey.

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

ADDRESSES

City of Clare
Maps are available for inspection at 202 West 5th Street, Clare, MI 48617.

City of Harrison
Maps are available for inspection at 229 East Beech Street, Harrison, MI 48625.

Township of Freeman
Maps are available for inspection at 7280 West Mannsiding Road, Lake, MI 48632.

Township of Garfield
Maps are available for inspection at 9348 Terry Street, Lake, MI 48632.

Township of Grant
Maps are available for inspection at 3022 Surrey Road, Clare, MI 48617.

Township of Hayes

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

Maps are available for inspection at 2051 East Townline Lake Road, Harrison, MI 48625.

Township of Surrey

Maps are available for inspection at 110 East Michigan Street, Farwell, MI 48622.

San Miguel County, New Mexico, and Incorporated Areas
Docket No.: FEMA–B–1069

Arroyo Hermanos	At the confluence with Gallinas Creek	+6448	City of Las Vegas.
	Just downstream of Lopez Street	+6493	
Arroyo Pajarito	At the confluence with Gallinas Creek	+6415	City of Las Vegas.
	Just downstream of Salazar Street	+6476	
Arroyo Pecos	Approximately 0.8 mile downstream of East Frontage Road.	+6381	City of Las Vegas, Unincorporated Areas of San Miguel County.
	Just upstream of Las Vegas Boulevard	+6458	
Gallinas Creek	Just upstream of I–25	+6381	City of Las Vegas, Unincorporated Areas of San Miguel County.
	Approximately 0.4 mile downstream of El Camino Road	+6515	

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

ADDRESSES

City of Las Vegas

Maps are available for inspection at the San Miguel County Office of Planning and Zoning, 500 West National Avenue, 3rd Floor, Las Vegas, NM 87701.

Unincorporated Areas of San Miguel County

Maps are available for inspection at the San Miguel County Assessor's Office, 500 West National Avenue, Suite 105, Las Vegas, NM 87701.

Cuyahoga County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1053

Anthony Lake Tributary	Approximately 425 feet downstream of Anthony Lane	+897	City of Parma, City of Parma Heights.
	Approximately 140 feet upstream of Anthony Lane	+902	
Big Creek	Approximately 300 feet downstream of Ridge Road	+679	City of Brooklyn.
	Approximately 1,100 feet upstream of Ridge Road	+695	
Chagrin River	Approximately 0.5 mile upstream of Rogers Road	+683	Village of Mayfield.
Chagrin River	Approximately 40 feet upstream of Woodland Road	+786	Village of Moreland Hills.
	Approximately 1,200 feet upstream of Woodland Road	+789	
	Approximately 850 feet downstream of Miles Road	+851	
	Approximately 1,200 feet upstream of Miles Road	+860	
Countrymans Creek	Upstream of I–71	+721	Village of Lindale.
	Downstream of Bellaire Road	+727	
Cuyahoga River	Approximately 40 feet upstream of Brecksville Road	+605	City of Garfield Heights.
	Approximately 700 feet upstream of Brecksville Road	+607	
Doan Brook	Approximately 160 feet upstream of Martin Luther King Jr. Drive.	+777	City of Cleveland Heights.
	Approximately 130 feet upstream of West Woodland Road	+915	
Dover Ditch	Approximately 150 feet downstream of Harding Drive	+724	City of North Olmsted.
Gifford-Avon Ditch	Approximately 100 feet upstream of Naigle Road	+629	City of Westlake.
	Approximately 0.5 mile upstream of Naigle Road	+629	
Lake Erie	Entire shoreline within the Cities of Bay Village, Cleveland, and Lakewood.	+576	City of Bay Village, City of Cleveland, City of Lakewood.
Mill Creek	Approximately 30 feet downstream of McCracken Road	+841	City of Maple Heights.
	Approximately 390 feet upstream of McCracken Road	+841	
Plum Creek	Mouth at West Branch Rocky River	+710	City of Olmsted Falls, Unincorporated Areas of Cuyahoga County.
	Approximately 70 feet downstream of Sprague Road	+780	
Rocky River	Approximately 1,100 feet upstream of Detroit Road	+580	City of Cleveland, City of Rocky River.
	Approximately 3,500 feet upstream of River Road	+606	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Tinkers Creek Tributary 1	Approximately 0.3 mile upstream of Walton Road	+930	City of Bedford.
West Branch Rocky River	Approximately 1.1 mile downstream of Water Street	+682	City of Olmsted Falls, Unincorporated Areas of Cuyahoga County.
	At Sprague Road	+753	

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

ADDRESSES

City of Bay Village
Maps are available for inspection at 350 Dover Center Road, Bay Village, OH 44140.

City of Bedford
Maps are available for inspection at 165 Center Road, Bedford, OH 44146.

City of Brooklyn
Maps are available for inspection at 7619 Memphis Avenue, Brooklyn, OH 44144.

City of Cleveland
Maps are available for inspection at 601 Lakeside Avenue, Cleveland, OH 44144.

City of Cleveland Heights
Maps are available for inspection at 40 Severance Circle, Cleveland Heights, OH 44118.

City of Garfield Heights
Maps are available for inspection at 5407 Turney Road, Garfield Heights, OH 44125.

City of Lakewood
Maps are available for inspection at 12650 Detroit Avenue, Lakewood, OH 44107.

City of Maple Heights
Maps are available for inspection at 5353 Lee Road, Maple Heights, OH 44137.

City of North Olmsted
Maps are available for inspection at 5200 Dover Center Road, North Olmsted, OH 44070.

City of Olmsted Falls
Maps are available for inspection at 26100 Bagley Road, Olmsted Falls, OH 44138.

City of Parma
Maps are available for inspection at 6611 Ridge Road, Parma, OH 44129.

City of Parma Heights
Maps are available for inspection at 6281 Pearl Road, Parma Heights, OH 44130.

City of Rocky River
Maps are available for inspection at 21012 Hillard Boulevard, Rocky River, OH 44116.

City of Westlake
Maps are available for inspection at 27700 Hillard Boulevard, Westlake, OH 44145.

Unincorporated Areas of Cuyahoga County
Maps are available for inspection at 323 Lakeside Avenue, Suite 400, Cleveland, OH 44113.

Village of Lindale
Maps are available for inspection at 4016 West 119th Street, Lindale, OH 44135.

Village of Mayfield
Maps are available for inspection at 6622 Wilson Mills Road, Mayfield, OH 44143.

Village of Moreland Hills
Maps are available for inspection at 4350 S.O.M. Center Road, Moreland Hills, OH 44022.

Kent County, Rhode Island (All Jurisdictions)
Docket No.: FEMA–B–1078

Maskerchugg River	Approximately 750 feet downstream of State Route 1A (Boston Post Road).	+15	City of Warwick, Town of East Greenwich.
	Approximately 45 feet upstream of Division Street	+75	
North Branch Pawtuxet River (Upper Reach).	Approximately 530 feet downstream of State Route 116 (located in Providence County).	+183	Town of Coventry.
	Approximately 240 feet downstream of State Route 116 (located in Providence County).	+185	

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

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

ADDRESSES

City of Warwick
Maps are available for inspection at the City Hall-Annex Building, Planning Department, 3275 Post Road, 2nd Floor, Warwick, RI 02886.

Town of Coventry
Maps are available for inspection at the Public Works Department, 1688 Flat River Road, Coventry, RI 02816.

Town of East Greenwich
Maps are available for inspection at the Department of Public Works, 111 Pierce Street, East Greenwich, RI 02818.

Cannon County, Tennessee, and Incorporated Areas
Docket No.: FEMA–B–1065

East Fork Stones River	Approximately 80 feet downstream of the confluence with Lehman Branch.	+690	Unincorporated Areas of Cannon County.
	Approximately 40 feet upstream of Doolittle Road	+706	

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

ADDRESSES

Unincorporated Areas of Cannon County
Maps are available for inspection at 1 Courthouse Square, Woodbury, TN 37190.

Gonzales County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1069

Baldridge Creek	Approximately 1 mile downstream of State Highway 97	+350	Unincorporated Areas of Gonzales County.
	Approximately 1,400 feet upstream of U.S. Route 90 West	+368	
Guadalupe River	At the confluence with Tinsley Creek	+278	City of Gonzales, Unincorporated Areas of Gonzales County.
	Approximately 1.4 mile downstream of County Road 466	+286	
Tinsley Creek	Approximately 530 feet upstream of Weimer Street	+294	City of Gonzales.
	Just upstream of Sarah DeWitt Drive	+303	

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

ADDRESSES

City of Gonzales
Maps are available for inspection at P.O. Box 547, Gonzales, TX 78629.

Unincorporated Areas of Gonzales County
Maps are available for inspection at 414 Saint Joseph Street, Gonzales, TX 78629.

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

Dated: October 29, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–28228 Filed 11–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0079; 92220–1113–0000–C3]

RIN 1018–AX27

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish a Manatee Refuge in Kings Bay, Citrus County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: This emergency rule establishes a manatee refuge in Citrus County, Florida, in the waters of Kings Bay, including its tributaries and connected waters because we, the U.S. Fish and Wildlife Service (Service), have determined that there is substantial evidence that there is imminent danger of a taking of one or more manatees (*Trichechus manatus*) in these waters. This emergency action is effective for 120 days. We will initiate the rulemaking process to establish a permanent manatee refuge in this area, including holding the first of several public meetings, within 10 days of the publication of this rule.

DATES: This action will be effective from November 15, 2010 through March 15, 2011, and the effective date for this action was also issued through a legal notice published in the *Citrus County Chronicle* on November 9, 2010, in accordance with 50 CFR 17.106. The dates for the public meetings are listed under the Public Participation section of this rule.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida 32256. Supplementary documents may be obtained via the Internet at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2010–0079. The addresses for the public meetings are listed under the Public Participation section of this rule.

FOR FURTHER INFORMATION CONTACT: Jim Valade, Florida Manatee Recovery Lead, (*see* **ADDRESSES** section), telephone 904/731–3336.

SUPPLEMENTARY INFORMATION:

Background

The Crystal River is a tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like waterbody fed by numerous fresh-water springs. The Kings Bay springs constitute one of the most important natural warm-water refuges for manatees. The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*) and the population is further protected as a depleted stock under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The West Indian manatee includes two subspecies: The Florida manatee (*Trichechus manatus latirostris*) and the Antillean manatee (*Trichechus manatus manatus*). The Florida manatee's range includes Kings Bay.

Kings Bay is actively used by a growing population of manatees that now numbers in the hundreds of individuals (reaching 565 individuals in 2010) (Kleen 2010, pers. com.). Manatees primarily use the area in Kings Bay as a wintering site, relying on the bay's natural springs and adjacent forage areas for warmth and sustenance. When Gulf of Mexico water temperatures drop to about 68 °F (20 °C), manatees looking for warmer water will begin showing up regularly in Kings Bay around November 15 and tend to stay until about March 31; this is the identified "manatee season" when local manatee sanctuaries are in effect. Occasionally, manatees will appear in the region earlier with the advent of an early winter and may remain in the region longer, following severe or extended winters. When the weather begins to warm around the end of March, manatees generally move away from the springs and Kings Bay, traveling to summer foraging areas along Florida's west coast.

Over the last 30 years (1980–2010), the Service and the State of Florida have created a network of manatee protection areas within the Kings Bay area. During the manatee season, this network includes seven Federal manatee sanctuaries (which are described in our regulations at 50 CFR 17.108(a)(1)–(a)(7)) and five State manatee protection zones (as described in Chapter 68C–22, "The Florida Manatee Sanctuary Act" (2010)). This network of manatee protection areas is enforced by Service, State, and local law enforcement officers. Extensive outreach and education programs support the protection area network, encouraging the public who engage in manatee viewing activities to avoid harassing manatees.

This network of existing manatee protection areas was designed to prevent the take of manatees caused by waterborne activities, including but not limited to, boating and manatee viewing activities. It was established to allow manatees to continue to gain access to critical warm-water areas and important resting and foraging areas. Take, as defined by section 3(19) of the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation at 50 CFR 17.3 to mean an act which actually kills or injures wildlife. "Harass" is also defined by regulation to mean any intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Under section 3(18) of the MMPA, harassment is defined to include any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. All takings, including takings by harassment, are prohibited.

The Service can minimize take through the designation of manatee protection areas in the form of either a manatee refuge or a manatee sanctuary. Regulations authorizing designation of manatee refuges and sanctuaries in areas where prohibitions or restrictions on certain waterborne activities are needed to prevent the take of manatees are codified in 50 CFR 17 subpart J. A manatee refuge is defined as an area in which the Director has determined that: (1) Certain waterborne activities will take one or more manatees; or (2) certain waterborne activities must be restricted

to prevent the take of one or more manatees, including but not limited to taking by harassment. A manatee sanctuary is an area where it has been determined that any waterborne activity will result in the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102).

Waterborne activities that occur on the Service's Crystal River National Wildlife Refuge (NWR) property in Kings Bay that are known to take manatees are restricted pursuant to 50 CFR 17 subpart J and the National Wildlife Refuge Improvement Act (16 U.S.C. 668dd–668ee), which allows the Service to issue special-use permits for commercial and retail activities that occur on NWR property. The Banana Island Manatee Sanctuary, designated under 50 CFR part 17 subpart J, prohibits all waterborne activities from occurring on some submerged lands owned by this NWR. Commercial and retail activities that occur on NWR-owned land include manatee viewing, diving, snorkeling, videography, and others. Businesses wanting to engage in these activities on NWR property obtain special-use permits from Crystal River NWR. These permits are conditioned to require permittees to take those steps needed to make sure that their activities and those of their customers do not harass or otherwise take manatees.

Citrus County's coastal waters, including the waters of Kings Bay, are used for a variety of water-based recreational and commercial activities, including: Manatee viewing, snorkeling and scuba diving, boating, canoeing and kayaking, fishing, waterskiing, and other activities. Both Citrus County residents and visitors to the area engage in these activities. These activities are an important source of income for the area. Local eco-tour operators, dive shops, marinas, hotels and motels, restaurants, and other businesses benefit from these activities (Buckingham 1990b, p. 6). Kings Bay and its clear waters have catered to the scuba diving industry for decades (Kochman *et al.* 1983, p. 6). Beginning in the 1960s, the increasing presence of manatees generated a commercial interest in manatee viewing activities (Hartman 1979, pp. 126–131). Local dive shops and others in the community developed and now cater to individuals wanting to view manatees (Sorice *et al.* 2003, p. 327). Kings Bay is now a nationally and internationally recognized destination for winter-time manatee viewing. In 2001, more than 100,000 individuals were thought to visit the area to view manatees (MMC 2001, p. 125); the number of participants has likely increased since then.

Waterborne activities, including manatee viewing activities, and their effects on manatees have been investigated in Kings Bay (Hartman 1979, p. v; Packard 1983, p. i; Kochman *et al.* 1985, p. 921; Buckingham 1990b, p. 1; Buckingham *et al.* 1999, p. 514; Meigs-Friend 2003, p. 1; Sorice *et al.* 2003, p. 319; King and Heinen 2004, p. 227; Berger 2007, p. 1). Researchers described individual manatee responses to the presence of people in the water: Manatees generally avoided people; some approached people with curiosity and then left; and some manatees approached and solicited interactions with people (Hartman 1979, pp. 128–130; Buckingham 1990b, pp. 28–29). Some manatees appeared to become more tolerant of people through regular encounters. Researchers described swimmer encounters that disturbed manatees: Pursuit, riding, diving from the surface on to manatees, sounds from scuba regulators, bright lights from underwater videographers, and others (Hartman 1979, p. 131; Buckingham 1990b, p. 29; Sorice *et al.* 2003, pp. 328–333; King and Heinen 2004, pp. 228–232). On a more subtle level, manatees were observed to move from preferred use areas to other areas in response to increasing numbers of boats and people (Kochman *et al.* 1985, pp. 922–924; Buckingham 1990b, pp. 16–17; Buckingham *et al.* 1999, p. 514). In particular, manatees tended to move into sanctuary or no-entry areas in the presence of increasing numbers of boats and people (Kochman *et al.* 1985, pp. 922–924; Buckingham 1990b, pp. 16–17; Buckingham *et al.* 1999, pp. 514; King and Heinen 2004, pp. 231–232).

The number of people, boats, and manatees has been increasing in the west Florida coast region. In Citrus County, home to Kings Bay, the number of Citrus County residents increased by 19.8 percent, from 118,085 to 141,416, over the 2000–2008 period (U.S. Census Bureau 2010 Web site). Concurrent with this increase in number of residents, the number of boats registered in Citrus County increased by 36.2 percent. In 2009, there were 17,601 boats registered in Citrus County, an increase of 4,675 boats since 2000, when 12,926 vessels were registered there (FDHSMV 2010 Web site). While the number of visitor-owned watercraft that use Citrus County waterways, including Kings Bay, is unknown, this number is likely increasing, based on county revenue trends that describe an increasing number of visitors to the area. Revenue trends associated with businesses that cater to visitors, including Citrus County lodging and food service revenues and tourist tax revenues, have increased by 178 percent and 214 percent, respectively, over the past 10 years, suggesting an increase in the number of visitors to the area (U.S. Census Bureau 2010 Web site). Tourism surveys suggest that about half of all visitors to the area come to Citrus County to enjoy water-based activities that include manatee viewing, snorkeling, and diving (Gold 2008, pp. 4–5).

In January 2010, Crystal River NWR researchers counted 646 manatees in Citrus County's coastal waters, including 565 manatees in Kings Bay. This is the highest number of manatees ever counted in this region and in Kings Bay (Kleen 2010, pers. com.). Wintering manatees have been counted by aerial survey in the region since the 1983–1984 winter, when 142 manatees, including 124 in Kings Bay and Crystal River, were first observed (Kleen 2010, pers. com.). The manatee population in Florida's Northwest Region grew at a rate of 4.0 percent per year through 2000, based on an assessment of adult survival rates (Runge *et al.* 2004, p. 371).

In the State's northwest region, adult manatee mortality is almost equally partitioned between human-related and natural causes, with watercraft collisions being the leading cause of human-induced mortality. For nonadults, perinatal mortality is the most common cause of death, with watercraft collisions ranked second. Each year, manatees are injured and/or killed by watercraft in Citrus County. From 1974–2009, 58 manatees died from collisions with watercraft in county waterways, including 15 manatees in Kings Bay. In 2008, the Florida Fish and Wildlife Conservation Commission (FWC) recorded the highest number (8) of manatees ever killed by watercraft in Citrus County (FWC FWRI Manatee Mortality Database 2010 Web site). Watercraft-related deaths occur throughout the year in this region, including Kings Bay. To reduce the number of watercraft-related collisions with manatees, boaters must adhere to State manatee-protection-zone speed restrictions, enforced by Service, State, and local law enforcement agencies. Additional no-entry areas created by this rulemaking will supplement efforts to reduce this source of mortality.

The impacts of encounters with manatees have been investigated in Citrus County for many years. Manatee responses to viewing participants and boats have been documented (Sorice *et al.* 2003, p. 324). Researchers noted increases in swimming, milling, and cavorting behaviors and decreases in resting, feeding, and nursing behaviors

when numbers of people and boats increased (Abernathy 1995, pp. 23–26; Wooding 1997, p. 1; King and Heinen 2004, pp. 230–231). They also observed that increases in numbers of boats and participants prompted manatees to use other areas (Kochman *et al.* 1985, pp. 922–924; Buckingham *et al.* 1999, p. 514). However, none of these studies' observations of manatee responses to viewing participants and boats suggest that harm (killing or injuring of manatees) has occurred or is occurring (Sorice *et al.* 2003, p. 320). Nor have there been any significant increases in the number of cold-related injuries and mortalities in the northwest Florida region, and manatee survival rates are among the highest in Florida (FWC FWRI Manatee Mortality Database 2010 Web site; Runge *et al.* 2007, p. 20).

Manatee harassment, largely associated with wintertime manatee viewing activities, is known to occur, and the Service, State, and other law enforcement agencies actively enforce harassment laws in Citrus County and in Kings Bay. Cited acts of harassment include trespass by individuals viewing manatees into manatee sanctuaries where the Service has determined that any waterborne activity occurring within these areas will result in take of manatees, including but not limited to take by harassment. Outside of these areas, the public disturbs and occasionally harasses manatees while engaged in viewing and other waterborne activities. When observed, violators are warned or cited. Given variations in enforcement practices and recordkeeping systems, numbers and trends in numbers of issued warnings and citations are difficult to interpret. As such, these records are not used to describe trends in harassment activity. Indirectly, the presence of large numbers of people in the vicinity of manatees may cause some animals to abandon the area, another form of harassment.

Increasing numbers of in-water visitors to Kings Bay and an absence of adequate space at wintering areas in which manatees can shelter free from harassment and other forms of take prompt the need for this emergency designation. Without sufficient space within the existing Kings Bay sanctuaries to shelter, rest, and feed free from harassment, manatees are at risk when exposed to cold temperatures for any length of time. The numbers of visitors and manatees have increased since 1998 when the last sanctuary was designated in Kings Bay (63 FR 55553; October 16, 1998), and researchers have documented dozens of manatees outside the boundaries of the seven existing Kings Bay sanctuaries, already filled to capacity with wintering manatees (Kleen 2010, pers. com.). Manatees have been harassed in areas that are outside the boundaries of the existing sanctuaries (Aloise 2010, pers. com.), and acts of harassment are likely to increase in the absence of additional measures. Pursuant to our authorities to designate manatee protection measures whenever substantial evidence exists of an imminent danger of a taking, including harassment, of one or more manatees, we believe that this emergency rulemaking is needed to prevent such take.

Additional measures used to address manatee harassment, include, additional law enforcement, increasing and improved outreach and education efforts including on-water volunteer efforts to educate manatee viewers, improved coordination with local eco-tour operators, special-use permits, and land acquisition and management activities.

Researchers believe that manatee protection areas, which can include sanctuaries or refuges, when combined with law enforcement, good outreach and education messages and efforts, and some limitations on activities and participant numbers, are an effective tool for reducing adverse effects associated with manatee viewing activities (Kraus 2003, pers. com.; Buckingham *et al.* 1990a, pp. 58–63). However, the effectiveness of these measures is diminished when: (1) Existing sanctuaries cannot provide enough space for all manatees seeking to use them; (2) limited numbers of enforcement officers are available to enforce regulations; (3) there are conflicting and inadequate education and outreach efforts and; (4) the Service's ability to control the number of people who come to view manatees is limited (Kraus 2003, pers. com.; Sorice *et al.* 2006, pp. 69–83).

At present, the current sanctuaries do not provide adequate space for all manatees wanting to use these sites. Observations from both aerial survey and on-water observers describe dozens of manatees unable to access overcrowded sanctuaries (Kleen 2010, pers. com.; Lusk 2010, pers. com.). This increase in the number of manatees unable to access the sanctuaries is consistent with the recent record high count of manatees (565) in Kings Bay in January 2010. Similarly, the number of residents, visitors, and boats in the area, including those who engage in manatee viewing activities, has increased. While not quantified, the number of public reports of purported manatee harassment received by Crystal River NWR is increasing (Lusk 2010, pers. com.). The presence of increasing numbers of manatees just outside of sanctuary boundaries, where they are more accessible to increasing numbers of people who come to view manatees, provides increasing opportunities for harassment to occur. While the existing network does provide a level of protection for wintering manatees, the network, in its current condition, is unable to provide the level of protection needed to prevent increasing acts of harassment from occurring in the face of increasing numbers of manatees and manatee viewing participants.

To further prevent acts of harassment and other forms of take from occurring in Kings Bay, through this emergency rule, we designate the entire area as a manatee refuge. The areas covered by this emergency rule are shown in the map in the rule portion of this document. With this designation, we will implement measures that will improve our ability to address potential take associated with manatee viewing and other activities. These protection measures will establish, as needed, additional no-entry areas outside of and within specified distances from existing manatee sanctuaries where all waterborne activities, including swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, and the use of water vehicles (including but not limited to boats powered by engine, wind or other means; ships powered by engine, wind or other means; barges, surfboards, personal watercraft, water skis, and any other devices or mechanisms capable of locomotion on, across, or underneath the surface of the water) are prohibited from November 15 to March 15. We will also restrict and/or prohibit specific actions known to take manatees in Kings Bay outside of existing manatee sanctuaries, like riding or attempting to ride a manatee.

Increasing numbers of manatees, increasing levels of human activities known to take manatees, and an outdated protected area network for addressing manatee harassment-related takings in Kings Bay prompts the need to implement additional measures now so that adequate protections will be in place in time for the start of the upcoming winter manatee season. The existing protected area network was last modified 14 years ago in 1998, when a high count of 250 manatees was observed in Kings Bay. Since that time, the number of manatees using Kings Bay has more than doubled, the number of Citrus County residents has increased by almost 20 percent, the number of locally registered boats has increased by

36 percent, and the number of people coming to view manatees in Crystal River exceeds the estimated 100,000 visitors who came to see manatees in 1998. Increasing numbers of manatees and members of the public engaged in manatee viewing activities are overwhelming the manatee protection area network. Additional protection measures need to be in place prior to the upcoming winter season (which starts on November 15, 2010) as described earlier in this document.

This emergency rule will give manatees protection from harassment at a time when they are unable to find refuge within the existing Federal manatee sanctuaries and are vulnerable to harassment due to the cold temperatures that confine them to Kings Bay. Designating manatee protection areas to prohibit the take of manatees in Kings Bay is consistent with our authorities under the ESA and the MMPA. The designation of a manatee refuge in Kings Bay is also consistent with the Service's Florida Manatee Recovery Plan (2001), which identifies the implementation of strategies to eliminate or minimize manatee harassment as an action needed to further the recovery of this species (USFWS 2001). Our authority to create manatee protection areas to prevent the take of manatees is codified in 50 CFR subpart J, which authorizes the Director to establish manatee refuges and sanctuaries. This authority also authorizes the Service to designate, on an emergency basis, manatee protection areas when it is determined that there is evidence of imminent danger of a taking of one or more manatees and that establishment of a manatee protection area is necessary to prevent such a taking.

Emergency Determination

This emergency rule establishes a manatee refuge in Kings Bay to prevent the imminent take of manatees resulting from manatee viewing and other activities known to occur in this area. To prevent the imminent take of manatees in Kings Bay, this emergency rule will (1) prohibit all waterborne activities from specified areas outside of existing sanctuaries where manatees that are unable to gain access and avoid harassment due to overcrowding are found; and (2) identify and restrict certain waterborne activities known to take manatees in Kings Bay, including actions taken by manatee viewing participants known to disturb manatees.

The emergency manatee refuge is located within the waters of Kings Bay and connecting waters and tributaries west of U.S. Highway 19 and upstream of the confluence of the Crystal River and Kings Bay. This designation of an emergency manatee refuge will not change the boundaries of the existing manatee sanctuaries in Kings Bay. See map below in the rule portion of this document.

When we initiate proceedings to develop a proposed rule to establish the manatee refuge area as required by § 17.106 and during the rulemaking process, we will consider the possible issuance of permits in accordance with § 17.105 and section 104 of the MMPA. Regulations under 50 CFR 17.105 authorize the Service to issue permits allowing activities, otherwise prohibited under 50 CFR 17.106 or 50 CFR 17.108, for scientific purposes or for the enhancement of propagation or survival. We will also explore other means to authorize activities otherwise prohibited under 50 CFR 17.106 or 50 CFR 17.108.

To protect manatees until we can complete the proposed rule and final rule that will permanently establish additional manatee protections in Kings Bay, the Service believes it is critical to establish a manatee refuge on an emergency basis to prevent the imminent take of manatees in Kings Bay from waterborne activities during the upcoming winter months. Specifically, we are establishing this manatee refuge now on an emergency basis to prevent acts of take including manatee harassment associated with manatee viewing and other activities this winter. This refuge designation will remain in place for 120 days, from November 15, 2010, to March 15, 2011. Consistent with our authority under our regulations at 50 CFR 17.106 to designate manatee protection areas on an emergency basis, within 10 days of this emergency designation, we will initiate the proceedings to establish the manatee refuge area as required by our regulations at 50 CFR 17.106(e).

Public Participation

The proceedings to establish the manatee refuge area will include a series of four public meetings as described below. All four public meetings will be held at the Plantation Inn and Golf Resort, 9301 W. Fort Island Trail, Crystal River, FL 34429.

First, we will hold two informational public meetings. The purpose of these informational public meetings is to provide the public with an opportunity to learn more about the emergency designation of a manatee refuge in Kings Bay, why the Service took this action, and to ask questions about the emergency designation. These informational public meetings will be held on:

(1) Tuesday, November 16, 2010, from 6 to 9 p.m.; and

(2) Thursday, November 18, 2010, from 6 to 9 p.m.

Next, we will hold two, non-decision making, informal public meetings to discuss the process of formally establishing Kings Bay as a manatee refuge. The purpose of these informal public meetings is to provide the public with information on the next steps in the process, as well as for the exchange of useful information. These informal public meetings will be held on:

(1) Saturday, November 20, 2010, from 1 to 4 p.m.; and

(2) Thursday, December 2, 2010, from 6 to 9 p.m.

Effective Date

In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective sooner than 30 days after publication in the **Federal Register**. As discussed above under "Emergency Determination," we need to establish this manatee protection area (Kings Bay refuge) prior to the time when manatees will be seeking warmer waters in Kings Bay for the winter. A 30-day delay in making these sites effective would result in further risks of manatee mortality, injury, and harassment during the period of delay. In view of the evidence that there is imminent danger that manatees will be taken in the waters of Kings Bay and in its tributaries and connected waters, we believe good cause exists to make this rule effective upon November 15, 2010. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553(b)(3)(B) to issue this rule without prior notice and public procedure. We believe such emergency action is in the public interest because of the imminent threat to manatees and the additional time required to complete the standard rulemaking process. The lack of emergency action could result in additional take of manatees. This rule does not supersede any more stringent State or local regulations.

Required Determinations

During the process of preparing a proposed rule to establish this manatee protection area, which will commence through a public workshop as described above under "Emergency Determination," we will be evaluating this action in relation to possible economic impact, its effect on small businesses, and other required determinations. These required determinations will be included in the proposed rule.

References Cited

For a list of the references cited in this rule, see Docket No. FWS–R4–ES–2010–0079, available at *http://www.regulations.gov.*

Author

The primary author of this document is Jim Valade (see **ADDRESSES** section).

Authority

The statutory authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C 1361 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C 1361–1407; 16 U.S.C 1531–1544; 16 U.S.C 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.108 by adding paragraph (c)(14) to read as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(14) *The Kings Bay Manatee Refuge.* A tract of submerged land that includes all waters of Kings Bay, including all tributaries and adjoining waterbodies, upstream of the confluence of Kings Bay and Crystal River, described by a line that bears North 53°00′00″ East (True) from the northeasternmost point of an island on the southwesterly shore of Crystal River (approximate latitude 28°53′32″ North, approximate longitude 82°36′23″ West) to the southwesternmost point of a peninsula of Magnolia Shores (approximate latitude 28°53′38″ North, approximate longitude 82°36′16″ West).

(i) The Kings Bay Manatee Refuge encompasses existing manatee protection areas as depicted on the map below and as described in paragraphs (a)(1) through (a)(7) of this section, and areas outside these sections as described in paragraph (c)(14)(ii)(A) of this section.

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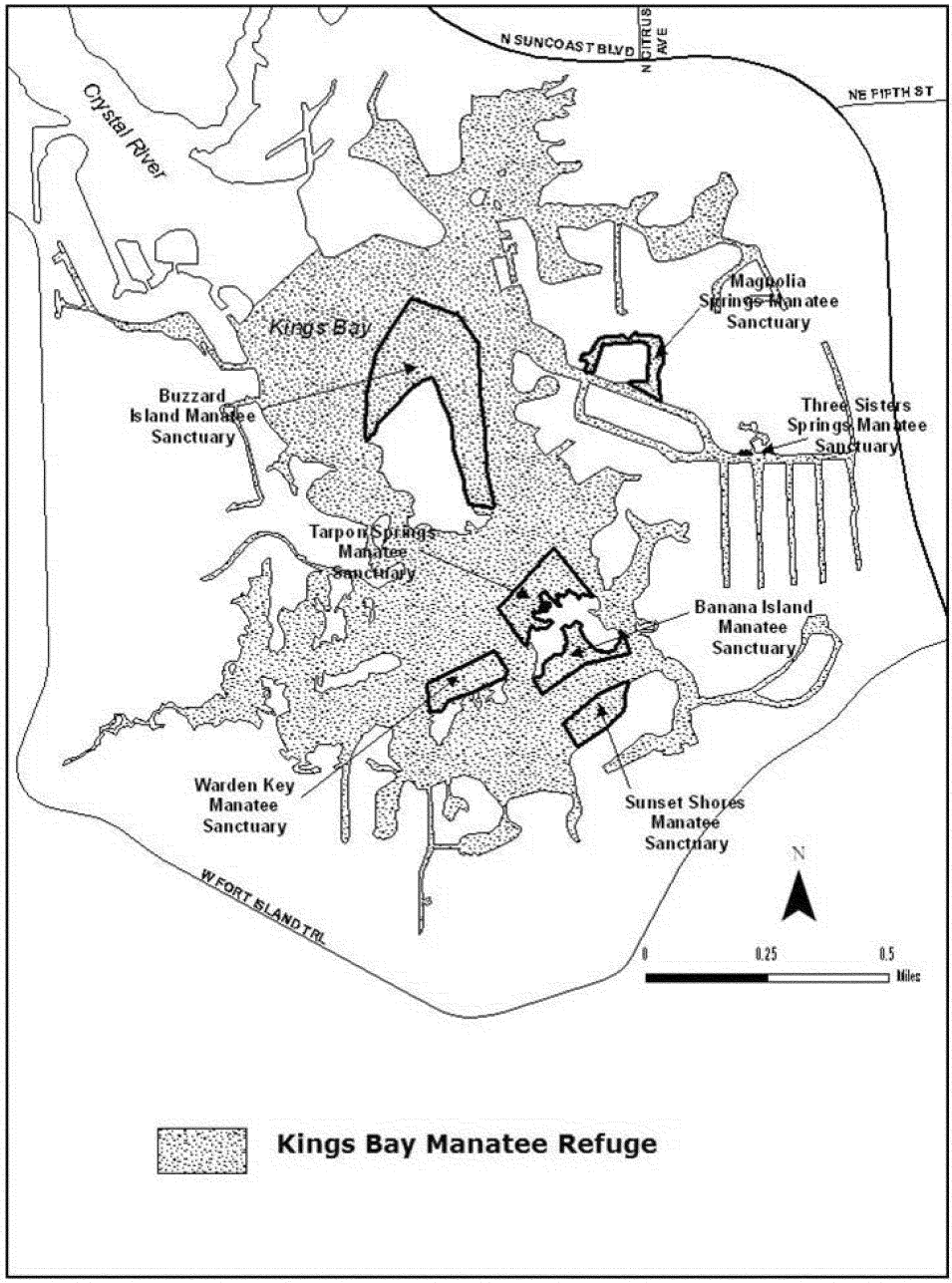

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(ii) All waterborne activities, including swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, and the use of water vehicles (including but not limited to boats powered by engine, wind or other means; ships powered by engine, wind or other means; barges, surfboards, personal watercraft, water skis, and any other devices or mechanisms capable of locomotion on, across, or underneath the surface of the water) are prohibited from November 15 to March 15 in areas as defined below that are outside of and within specified distances from the existing manatee sanctuaries located in Kings Bay (defined in § 17.108(a)).

(A) When manatees exceed the capacity of an existing sanctuary or shift usage around an existing manatee sanctuary due to water or weather conditions, we will designate "No entry" areas within the Kings Bay manatee refuge and outside of existing manatee sanctuaries as follows:

(1) For the sanctuaries set forth in paragraphs (a)(1) through (a)(6) of this section, to a distance not to exceed 100 feet from the existing sanctuary boundary.

(2) For the sanctuary set forth in paragraph (a)(7) of this section, to a distance not to exceed 400 feet from the existing boundary. We do not intend to completely mark off the manmade channel. Expansions could occur directly around the existing sanctuary and north into the area locally known as Three Sisters Springs.

(B) Designations of "no entry" areas around existing manatee sanctuaries as described above and within the Kings Bay manatee refuge will be made based on aerial survey observations of manatees using the existing sanctuary sites, current weather information, and other sources of credible, relevant information. We could designate "no entry" areas around one or all of the manatee sanctuaries depending on the winter season.

(C) Additional protection areas within the Kings Bay manatee refuge, but outside of the existing manatee sanctuaries set forth in paragraphs (a)(1) through (a)(7) of this section will be posted to distances as described in paragraph (c)(14)(ii)(A) of this section and identified by the following devices: buoys, float lines, signs, advisories from on-site Service employees and their designees, or other methods.

(iii) *Exceptions.* Private and public landowners who own property that adjoins designated no entry areas in Kings Bay are authorized to be in these areas for the purpose of accessing their property and local waterways, storing watercraft, and maintaining owned property and waterways. Authorized individuals include property owners, their guests, employees, and their designees. All watercraft operated by authorized individuals will be identified by a sticker placed on the watercraft in a conspicuous location; the Service will provide identifying stickers. All authorized watercraft must operate at idle speed when in adjoining waters. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(iv) *Notifications.* When waterborne activities pose an immediate threat to aggregations of manatees and are likely to take one or more manatees, additional protection areas outside of existing manatee sanctuaries set forth in paragraphs (a)(1) through (a)(7) of this section but within the Kings Bay manatee refuge will be posted to distances as described in paragraph (c)(14)(ii)(A) of this section. No-entry area designations will occur immediately. We will advise the public of designations through public notice(s) announcing and describing the measures in a local newspaper and other media, including but not limited to, local television and radio broadcasts, Web sites, and other news outlets, as soon as time permits. Onsite Service employees and their designees, when present, will also inform waterway users of designations.

(v) *Prohibitions.* Pursuant to the ESA and MMPA, all takings, including takings by harassment, are prohibited throughout the year and any manatee takings, wherever they may occur, are prohibited. To better prevent the take of manatees by individuals engaged in waterborne activities while in the water, in boats, or on-shore within the Kings Bay Manatee Refuge, we specifically identify and prohibit the following types of activities.

(A) Chasing or pursuing manatee(s).

(B) Disturbing or touching resting or feeding manatee(s).

(C) Diving from the surface on to resting or feeding manatee(s).

(D) Cornering or surrounding or attempting to corner or surround a manatee(s).

(E) Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch manatee(s).

(F) Poking, prodding, or stabbing, or attempting to poke, prod, or stab manatee(s) with anything, including your hands and feet.

(G) Standing on or attempting to stand on manatee(s).

(H) Separating a mother and calf or attempting to separate a mother and calf.

(I) Separating manatee(s) from a group or attempting to separate manatee(s) from a group.

(J) Giving manatee(s) anything to eat or drink or attempting to give manatee(s) anything to eat or drink.

(K) Actively initiating contact with belted and/or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, and antennae.

(L) The following waterborne activities are prohibited within Three Sisters Springs, from November 15 to March 15:

(1) Scuba diving.

(2) Fishing, including with hook and line, by cast net, or spear.

(vi) The area defined as Three Sisters Springs where scuba diving and fishing is prohibited is delineated as the following: The area known locally as Three Sisters Springs, which is located along the north shore of the canal that begins on the west side of the City of Crystal River's SE Cutler Spur Boulevard and runs west northwest to Kings Bay. The area includes at least three main spring vents and numerous smaller vents within the Three Sisters Springs complex, and the spring run that connects the springs to the canal.

Dated: October 25, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–28196 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130102–91386–02]

RIN 0648–XZ39

Western and Central Pacific Fisheries for Highly Migratory Species; 2010 Bigeye Tuna Longline Fishery Closure

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

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean as a result of the fishery reaching the 2010 catch limit.

DATES: Effective November 22, 2010, through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Region, 808–944–2219.

SUPPLEMENTARY INFORMATION: Pelagic longline fishing in the western and central Pacific Ocean is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act (Act). Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart O.

NMFS established a limit (74 FR 63999, December 7, 2009, and codified at 50 CFR 300.224) for calendar year 2010 of 3,763 metric tons (mt) of bigeye tuna (*Thunnus obesus*) that may be caught and retained in the U.S. pelagic longline fishery in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area). NMFS monitored the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the 2010 catch limit is expected to be reached on November 22, 2010. In accordance with § 300.224(d), this rule serves as advance notification to fishermen, the fishing industry, and the general public that the U.S. longline fishery for bigeye tuna in the Convention Area will be closed starting on November 22, 2010, through the end of the 2010 calendar year. The 2011 fishing year is scheduled to open on January 1, 2011; the 2011 bigeye tuna catch limit will be 3,763 mt. This rule does not apply to the longline fisheries

of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI), as described below.

During the closure, a U.S. fishing vessel may not retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except that any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and landed, provided that they are landed within 14 days of the start of the closure, that is, by December 6, 2010. This 14-day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to 50 CFR 665.803(a), that the current trip type is shallow-setting.

Furthermore, bigeye tuna caught by longline gear may be retained on board, transshipped, and landed if the fish are caught by a vessel registered for use under a valid NMFS-issued American Samoa Longline Limited Access Permit or if they are landed in American Samoa, Guam, or the CNMI. In either of these two cases, however, the following conditions must be met:

(1) The bigeye tuna are not caught in the portion of the U.S. Exclusive Economic Zone (EEZ) around the Hawaiian Archipelago;

(2) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(3) The bigeye tuna are landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

During the closure, a U.S. vessel is also prohibited from transshipping bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated with a valid permit issued under 50 CFR 660.707 or 665.801.

The catch limit and this closure do not apply to bigeye tuna caught by longline gear outside the Convention Area, such as in the eastern Pacific Ocean. To ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, however, the following requirements apply during the closure period:

(1) A U.S. fishing vessel may not be used to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress on November 22, 2010. In that case, the catch of bigeye tuna must be landed by December 6, 2010; and

(2) If a U.S. vessel is used to fish using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. Specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

The above two additional prohibitions do not apply to the following vessels:

(1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and

(2) Vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in American Samoa, Guam, or the CNMI, so long as these vessels conduct fishing activities in accordance with the conditions described above, that is, the bigeye tuna were not caught in the EEZ around the Hawaiian Archipelago, the retention, transshipment, and/or landing is in compliance with applicable laws and regulations, and the bigeye tuna are landed by a vessel that has a valid permit issued under 50 CFR 660.707 or 665.801.

Classification

There is good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). This action is based on the best available information and is necessary for the conservation and management of bigeye tuna. Compliance with the notice and comment requirement would be impracticable and contrary to the public interest, since NMFS would be unable to ensure that the 2010 bigeye tuna catch limit is not exceeded. The annual catch limit is an important mechanism to ensure that the U.S.A. complies with its international obligations in preventing overfishing and managing the fishery at optimum yield. Moreover, NMFS previously solicited public comments on the rule that established the catch limit (74 FR 63999, December 7, 2009). For the same reasons, there is good cause to establish an effective date less than 30 days after date of publication of this notice.

This action is required by § 300.224(d) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: November 4, 2010.

James P. Burgess,

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

[FR Doc. 2010–28284 Filed 11–8–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XAO21

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2010 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 4, 2010, through 2400 hrs, A.l.t., December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 24, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by 0648–XAO21, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic

comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) exclusive economic zone 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 part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) on January 1, 2010 (75 FR 11778, March 12, 2010).

NMFS has determined that approximately 2,260 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2010 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for POP in Bering Sea subarea of the BSAI. This will enhance the socioeconomic well-being of harvesters dependent upon POP in this area. The Administrator, Alaska Region considered the following factors in reaching this decision: (1) The current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels 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 opening of POP in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 3, 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.

Without this inseason adjustment, NMFS could not allow the fishery for POP in the Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 19, 2010.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: November 4, 2010.

James P. Burgess,

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

[FR Doc. 2010–28264 Filed 11–4–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 216
Tuesday, November 9, 2010

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Document Number AMS–FV–07–0091; FV–07–706–PR–2A]

RIN 0581–AC78

Establishment of a U.S. Honey Producer Research, Promotion, and Consumer Information Order; Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule and referendum order.

SUMMARY: This document withdraws a proposed rule published in the **Federal Register** on April 12, 2010, that proposed a new U.S. honey producer funded research and promotion program under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed U.S. Honey Producer Research, Promotion and Consumer Information Order (Proposed Order) was submitted to the Department of Agriculture (Department) by the American Honey Producers Association (AHPA). The Department conducted an initial referendum from May 17, 2010, through June 4, 2010, to ascertain whether the persons to be covered by and assessed under the Proposed Order favored the Order prior to it going into effect. The Proposed Order failed by vote. Accordingly, based upon the referendum results, the proposed rule is being withdrawn.

DATES: *Effective Date:* November 9, 2010.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Ave., SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free), Fax: (202) 205–2800 or e-mail *kimberly.coy@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

This action withdraws a proposed rule and referendum order published in the **Federal Register** on April 12, 2010 [75 FR 18430], that proposed a new U.S. honey producer funded research and promotion program.

As part of this rulemaking, a proposed rule was published in the **Federal Register** on July 14, 2009 [74 FR 34182], with a 60-day comment period which closed on September 4, 2009. Fourteen comments were received. In addition, a second proposed rule and referendum order was published in the **Federal Register** on April 12, 2010 [75 FR 18430]. A separate final rule on referendum procedures was published in the **Federal Register** on April 12, 2010 [75 FR 18396].

The Department conducted an initial referendum from May 17, 2010 through June 4, 2010 to ascertain whether the persons to be covered by and assessed under the Proposed Order favored the Order prior to it going into effect. To be eligible to vote, producers must have produced 100,000 or more pounds of honey from January 1, 2008 through December 31, 2008. The Proposed Order would have been implemented if approved by a majority of the producers voting in the referendum, which also represented a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. In the referendum, 41 percent of those who voted—representing 52 percent of the voted volume of U.S. honey—favored implementation of the Order. Therefore, the Proposed Order failed by vote. Accordingly based upon the referendum results, the proposed rule is being withdrawn.

The proposed rule to implement a new U.S. honey producer funded research and promotion program under the 1996 Act published in the **Federal Register** on April 12, 2010 (75 FR 18430), is hereby withdrawn.

List of Subjects in 7 CFR Part 1245

Administrative practice and procedure, Advertising, Consumer Education, U.S. Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Dated: November 3, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–28242 Filed 11–8–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1108; Directorate Identifier 2010–NM–151–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–215–1A10 (CL–215), CL–215–6B11 (CL–215T Variant), and CL–215–6B11 (CL–415 Variant) 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:

> Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced * * * resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *
>
> * * * * *
>
> A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator has been conducted. It has identified that the worst-case scenarios would be impact damage to various components, potentially resulting in fuel spillage, uncommanded flap movement, or loss of aileron control [and consequent reduced controllability of the airplane].
>
> * * * * *

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 December 27, 2010.

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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* 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: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

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–2010–1108; Directorate Identifier 2010–NM–151–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–42R1, dated May 14, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

* * * * *

Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced on CL–600–2B19 (CRJ) aircraft, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. To date, the lowest number of flight cycles accumulated at the time of failure has been 6991.

Although there have been no failures to date on any CL–215–1A10 (CL–215) or CL–215–6B11 (CL–215T and CL–415) aircraft, similar accumulators, Part Number (P/N) 08–8423–010 (MS28700–3), to those installed on the CL–600–2B19, are installed on the aircraft listed in the Applicability section of this directive [MCAI].

A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator has been conducted. It has identified that the worst-case scenarios would be impact damage to various components, potentially resulting in fuel spillage, uncommanded flap movement, or loss of aileron control [and consequent reduced controllability of the airplane].

This directive [MCAI] mandates repetitive [ultrasonic] inspections of the accumulators for cracks and replacement of any accumulator in which a crack is detected.

* * * * *

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

Relevant Service Information

Bombardier has issued Service Bulletins 215–541, 215–3155, and 215–4414, all Revision 1, all dated March 12, 2010. 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 6 products of U.S. registry. We also estimate that it would take about 7 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 $3,570, or $595 per product per inspection cycle.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $4,055, for a cost of $4,565 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII,

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

Regulatory Findings

We determined that this 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:

Bombardier, Inc.: Docket No. FAA–2010–1108; Directorate Identifier 2010–NM–151–AD.

Comments Due Date

(a) We must receive comments by December 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–215–1A10 (CL–215) airplanes, serial numbers 1001 through 1990 inclusive;

(2) Model CL–215–6B11 (CL–215T Variant) airplanes, serial numbers 1056 through 1125 inclusive;

(3) Model CL–215–6B11 (CL–415 Variant) airplanes, serial numbers 2001 through 2990 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls; and 32: Landing gear.

Reason

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

Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced * * * resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator has been conducted. It has identified that the worst-case scenarios would be impact damage to various components, potentially resulting in fuel spillage, uncommanded flap movement, or loss of aileron control [and consequent reduced controllability of the airplane].

* * * * *

Compliance

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

Inspection To Determine Flight Hours

(g) Within 50 flight hours after the effective date of this AD, inspect to determine the number of flight cycles accumulated by each of the applicable accumulators (i.e., brake, aileron, elevator, and rudder accumulators) having part number (P/N) 08–8423–010 (MS28700–3) installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the number of flight cycles accumulated can be conclusively determined from that review.

Initial Ultrasonic Inspection

(h) For Model CL–215–1A10 (CL–215) and CL–215–6B11 (CL–215T) airplanes: Do an ultrasonic inspection for cracking of the accumulator at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

TABLE 1—SERVICE BULLETINS

For model—	Use Bombardier Service Bulletin—	Revision—	Dated—
CL–215–1A10 (CL–215)	215–541	1	March 12, 2010.
CL–215–6B11 (CL–215T)	215–3155	1	March 12, 2010.
CL–600–6B11 (CL–415)	215–4414	1	March 12, 2010.

(1) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of more than 875 total flight cycles or on which it is not possible to determine the number of total accumulated flight cycles, do the inspection within 125 flight cycles after the effective date of this AD.

(2) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of 875 total flight cycles or fewer, do the inspection before the accumulation of 1,000 flight cycles on the accumulator.

(i) For Model CL–215–6B11 (CL–415) airplanes, do an ultrasonic inspection for cracking of the accumulator at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

(1) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of more than 750 flight cycles or on which it is not possible to determine the number of total accumulated flight cycles, do the inspection within 250 flight cycles after the effective date of this AD.

(2) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of 750 total flight cycles or fewer, do the inspection before the accumulation of 1,000 flight cycles on the accumulator.

Repetitive Inspections

(j) If no cracking is found during any inspection required by paragraph (h) or (i) of this AD, repeat the inspection thereafter at intervals not to exceed 750 flight cycles.

(k) If any cracking is found during any inspection required by paragraph (h) or (i) of this AD, before further flight, replace the accumulator with a serviceable accumulator, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD. Doing the replacement does not end the inspection requirements of this AD. Repeat the inspections required by paragraph (h) or (i) of this AD at intervals not to exceed 750 flight cycles.

Parts Installation

(l) As of the effective date of this AD, no person may install an accumulator (P/N) 08–8423–010 (MS28700–3) on any airplane unless the accumulator has been inspected in accordance with the requirements of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Inspections accomplished before the effective date of this AD in accordance with the applicable service bulletin listed in Table 2 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 2—CREDIT SERVICE BULLETINS

For model—	Use Bombardier Service Bulletin—	Dated—
CL–215–1A10 (CL–215)	215–541	July 9, 2009.
CL–215–6B11 (CL–215T)	215–3155	July 9, 2009.
CL–600–6B11 (CL–415)	215–4414	July 9, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(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

(o) Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF–2009–42R1, dated May 14, 2010; and the service bulletins listed in Table 1 of this AD; for related information.

Issued in Renton, Washington, on November 2, 2010.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28275 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1107; Directorate Identifier 2009–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Model 750 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 750 airplanes. This proposed AD would require an inspection to determine the serial numbers of the auxiliary power unit (APU) generator and the left and right engine direct current (DC) generators, and related corrective actions if necessary. This proposed AD would also require revising the airplane flight manual. This proposed AD results from a report of a DC generator overvoltage event which caused smoke in the cockpit and damage to numerous avionics and electrical components. We are proposing this AD to detect and correct an overvoltage condition on the DC electrical busses caused by exciter stator winding failures, and subsequent failure of the generator control unit (GCU) overvoltage protection circuitry, which could result in damage to critical electrical and avionics components.

DATES: We must receive comments on this proposed AD by December 27, 2010.

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 proposed AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; e-mail *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* 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 (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Raymond Johnston, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4197; fax (316) 946–4107.

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–2010–1107; Directorate Identifier 2009–NM–263–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 have received a report of a DC generator overvoltage event which caused smoke in the cockpit and damage to numerous avionics and electrical components. This event occurred on the ground before an engine was started. This event was determined to be the result of a short in the APU generator windings and subsequent damage to the overvoltage protection circuit in the GCU due to prolonged holding of the generator reset switch in the cockpit. This condition, if not corrected, could result in an overvoltage condition on the DC electrical busses caused by exciter stator winding failures, and subsequent failure of the GCU overvoltage protection circuitry associated with the engine and APU DC generators.

Relevant Service Information

We have reviewed Cessna Service Letter SL750–24–08, dated August 13, 2009, which describes procedures for an inspection to determine the serial number of the APU generator and the left and right engine 400 amp DC generators. For any airplane having any generator with a serial number from 060 through 297 without suffix "C," the service letter specifies to replace the affected generator(s) before further flight. We also reviewed Cessna Airplane Flight Manual Temporary Changes 75EUMA TC–R01–35, dated May 8, 2009; 75EUA TC–R01–35, dated May 8, 2009; and 75FMA TC–R01–46, dated April 23, 2009; which provide instructions not to hold the main or APU generator reset switches in the reset position for more than one second and to make no more than two attempts to reset a generator.

FAA's Determination and Requirements of This Proposed AD

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

Interim Action

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

Costs of Compliance

We estimate that this proposed AD would affect 67 airplanes of U.S. registry. We also estimate that it would take up to 10 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be up to $56,950, or $850 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.

You can find our regulatory evaluation and the estimated costs of compliance 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:

The Cessna Aircraft Company: Docket No. FAA–2010–1107; Directorate Identifier 2009–NM–263–AD.

Comments Due Date

(a) We must receive comments by December 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Cessna Aircraft Company Model 750 airplanes, certificated in any category, having serial numbers –0222, and –0225 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Unsafe Condition

(e) This AD results from a report of a direct current (DC) generator overvoltage event which caused smoke in the cockpit and damage to numerous avionics and electrical components. The Federal Aviation Administration is issuing this AD to detect and correct an overvoltage condition on the DC electrical busses caused by exciter stator winding failures, and subsequent failure of the generator control unit overvoltage protection circuitry, which could result in damage to critical electrical and avionics components.

Compliance

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

Inspection

(g) For airplanes having serial numbers –0222, –0225 through –0293 inclusive, –0295, –0296, and –0298: Within 6 months or 600 flight hours after the effective date of this AD, whichever occurs later, inspect to determine the serial number of the auxiliary power unit (APU) generator and the left and right engine 400 amp DC generators, in accordance with the Accomplishment Instructions of Cessna Service Letter SL750–24–08, dated August 13, 2009. For airplanes that have one or more generators having a serial number 060 through 297 inclusive without suffix "C," before further flight, replace the affected generator(s) with a new or serviceable generator, in accordance with the Accomplishment Instructions of Cessna Service Letter SL750–24–08, dated August 13, 2009.

Revision of the Airplane Flight Manual (AFM)

(h) For airplanes having serial numbers –0222, and –0225 and subsequent: Within 30 days after the effective date of this AD, revise Section II, Operating Limitations, Generator Limitations, page 2–12, of the applicable airplane flight manual (AFM) to include the information in the applicable Temporary Change (TC) required by paragraph (h)(1), (h)(2), or (h)(3) of this AD. These TCs introduce procedures for resetting the APU generator. Operate the airplane according to the limitations and procedures in the TCs.

(1) For Model 750 Citation X (750–0173 and on and airplanes incorporating SB750–71–10 AFM 75FMA, Revision 1, dated June 13, 2002): Insert Cessna Temporary Change (TC) 75FMA TC–R01–46, dated April 23, 2009.

(2) For Model 750 Citation X (750–0173 and on and airplanes incorporating SB750–71–10) AFM 75EUA, Revision 1, dated June 19, 2002: Insert Cessna TC 75EUA TC–R01–35, dated May 8, 2009.

(3) For Model 750 Citation X (750–0173 and on and airplanes incorporating SB750–71–10) AFM 75EUMA, Revision 1, dated June 30, 2002: Insert Cessna TC 75EUMA TC–R01–35, dated May 8, 2009.

Note 1: The AFM revisions required by paragraph (g) of this AD may be done by inserting copies of TCs 75FMA TC–R01–46, dated April 23, 2009; 75EUA TC–R01–35, dated May 8, 2009; or 75EUMA TC–R01–35, dated May 8, 2009; into the applicable AFM. When these TCs have been included in general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revision is identical to that in TCs.

Parts Installation

(i) As of the effective date of this AD, no person may install any Pacific Scientific generators having part number 92841–1 (9914752–1) that has serial numbers 060 through 297 without the suffix "C" on any airplane.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Raymond Johnston, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4197; fax (316) 946–4107.

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

Issued in Renton, Washington, on November 2, 2010.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28274 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R02–OAR–2010–0688; FRL–9223–7]

Approval and Promulgation of One-Year Extension for Attaining the 1997 8-Hour Ozone Standard for the New Jersey Portion of the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, EPA is proposing to approve an extension from June 15, 2010 to June 15, 2011 of the applicable attainment date for the New Jersey portion of the Philadelphia-Wilmington-Atlantic City 1997 8-hour ozone nonattainment area (Philadelphia Area), which is classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). This proposed extension is based in part on complete, quality-assured air quality data recorded during the 2009 ozone season. In accordance with requirements for a 1-year extension, the Philadelphia Area's 4th highest daily 8-hour monitored ozone value during the 2009 ozone season at each monitor in the area is less than 0.084 parts per million (ppm). If EPA finalizes this proposed approval of the attainment date extension, EPA will revise the table with regard to the 8-hour ozone attainment dates for the New Jersey portion of the Philadelphia Area.

DATES: Comments must be received on or before December 9, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2010–0688, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2010–0688. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is

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

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249; e-mail address: *Truchan.Paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. New Jersey's Request for Attainment Date Extension for the Philadelphia Area

On June 23, 2010, the State of New Jersey requested a one-year attainment date extension for the Philadelphia Area. The Philadelphia Area, which is classified as moderate for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS), consists of Cecil County in Maryland; Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; the entire State of Delaware; and Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem Counties in New Jersey. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act (CAA), is June 15, 2010. New Jersey requested that the attainment date be extended to June 15, 2011.

II. CAA Requirements and EPA Actions Regarding One-Year Extensions

Section 181(a)(5) of the CAA provides for a 1-year extension of the applicable attainment date for an ozone nonattainment area if the State has complied with the requirements in the applicable implementation plan and there is no more than one exceedance of the NAAQS in the year preceding the extension year. 40 CFR 51.907 sets forth how section 181(a)(5) applies to an area subject to the 1997 8-hour ozone NAAQS. Under 40 CFR 51.907, an area will meet the requirement of section 181(a)(5)(B) of the CAA pertaining to one-year extensions of the attainment date if:

(a) For the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 parts per million (ppm) or less,

(b) For the second 1-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.

EPA's review of the actual ozone air quality data in the Air Quality System shows that the 4th highest daily average 8-hour ozone concentrations for the 2009 attainment year ozone season, for all monitors in the Philadelphia Area measured less than 0.084 ppm (Table 1), as required by 40 CFR 51.907(a). The highest-reading monitoring site had a 4th high value for 2009 of 0.074 ppm (Bucks/Pennsylvania). The monitoring data has been quality-controlled and quality-assured.

TABLE 1—MONITORING DATA FOR 8-HOUR OZONE IN THE PHILADELPHIA AREA

Site ID	County/state	Year	4th Max 8-hr (ppm)
10–001–0002	Kent/Delaware	2009	.066
10–003–1007	New Castle/Delaware	2009	.068
10–003–1010	New Castle/Delaware	2009	.068
10–003–1013	New Castle/Delaware	2009	.069
10–005–1002	Sussex/Delaware	2009	.067
10–005–1003	Sussex/Delaware	2009	.069
24–015–0003	Cecil/Maryland	2009	.072
42–017–0012	Bucks/Pennsylvania	2009	.074
42–029–0100	Chester/Pennsylvania	2009	.067
42–045–0002	Delaware/Pennsylvania	2009	.065
42–091–0013	Montgomery/Pennsylvania	2009	.070
42–101–0004	Philadelphia/Pennsylvania	2009	.059
42–101–0024	Philadelphia/Pennsylvania	2009	.072
34–001–0006	Atlantic/New Jersey	2009	.071
34–007–1001	Camden/New Jersey	2009	.071
34–011–0007	Cumberland/New Jersey	2009	.072
34–015–0002	Gloucester/New Jersey	2009	.071
34–021–0005	Mercer/New Jersey	2009	.071
34–029–0006	Ocean/New Jersey	2009	.071

EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) New Jersey has complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan. New Jersey's applicable ozone implementation plan can be found at 40 CFR 52.1570. The most recent actions related to New Jersey's applicable ozone implementation plan can be found at EPA's rulemakings: "Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans, Reasonably Available Control Technology, Reasonably Available Control Measures and Conformity Budgets" proposed January 16, 2009 (74 FR 2945) and final rulemaking May 15, 2009 (74 FR 22837); "Approval and Promulgation of Implementation Plans; Implementation Plan Revision; State of New Jersey" proposed April 23, 2010 (75 FR 21197) and final rulemaking August 3, 2010 (74 FR 45483); and "Approval and Promulgation of Implementation Plans; New Jersey; 8-hour Ozone Control Measure" proposed July 22, 2010 (75 FR 42672); and

(2) The maximum 4th highest daily 8-hour monitored value at any monitoring site in the Philadelphia area during the 2009 ozone season was 0.074 ppm, which is below the 0.084 ppm criteria.

Therefore, EPA is proposing to approve the State's request for an extension of the attainment date for the New Jersey portion of the Philadelphia Area to June 15, 2011. If the approval is finalized, the table in 40 CFR 81.331 will be modified to reflect EPA's approval of New Jersey's attainment date extension request. The table is entitled "New Jersey-Ozone (8-Hour Standard)."

III. Conclusion

Pursuant to CAA section 181(a) and 40 CFR 51.907, EPA is proposing to approve an attainment date extension from June 15, 2010 to June 15, 2011 for the New Jersey portion of the Philadelphia Area, which is classified as moderate for the 1997 8-hour ozone NAAQS. EPA is publishing this rule as a proposal in the Proposed Rules section of this **Federal Register**, and receiving public comments until December 9, 2010.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action determines, based on air quality considerations and compliance with the State implementation plan, that an area has qualified for a one-year extension of the attainment date of a previously established NAAQS, and imposes no additional requirements. For that reason, this action:

- Will not have 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 and therefore does not impose any additional enforceable duties, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).
- 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely determines that an area has attained a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.
- 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).
- Will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.
- Does not affect the level of protection provided to human health or the environment because extending the attainment date does not alter the emission reduction measures that are required to be implemented in the Philadelphia Area, which is classified as moderate nonattainment for the 1997 8-hour ozone standard. *See* 69 FR at 23909 (April 30, 2004).
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

If the Philadelphia Area were not granted an extension of its attainment date, EPA's recourse would be to initiate a reclassification of the Philadelphia Area from its current classification of moderate nonattainment to serious nonattainment, pursuant to section 181(b)(2) of the CAA. Because the Philadelphia Area was formerly a severe nonattainment area under the revoked 1-hour ozone standard (*see* 56 FR at 56773, November 6, 1991), it is required to continue to implement severe area requirements pursuant to EPA's interpretation of "anti-backsliding" provision of section 172(e) of the CAA. *See* 69 FR at 23973, April 30, 2004, *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), *modified and rehearing den.,* 489 F.3d 1245 (DC Cir. 2007). The severe area requirements are more stringent than both the moderate and serious area requirements set forth in Title I, Part D, Subpart 2 of the CAA. Therefore, even if EPA were to not grant the attainment date extension and instead move to reclassify the area to serious nonattainment, no additional emission reduction measures would be required to be implemented in the Philadelphia Area through a 181(b)(2) reclassification.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 20, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–28254 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2010–0574; FRL–9223–1]

Approval of One-Year Extension for Attaining the 1997 8-Hour Ozone Standard for the Delaware, Maryland, and Pennsylvania Portions of the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the attainment date from June 15, 2010 to June 15, 2011 for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia-Wilmington-Atlantic City nonattainment area (Philadelphia Area), which is classified as moderate for the 1997 8-hour ozone national ambient air quality standard (NAAQS). This extension is based in part on air quality data recorded during the 2009 ozone season. Specifically, the Philadelphia Area's 4th highest daily 8-hour monitored ozone value during the 2009 ozone season is 0.084 parts per million (ppm) or less. Accordingly, EPA is revising the tables concerning the 8-hour ozone attainment dates for the Philadelphia Area in the States of Delaware and Maryland, and the Commonwealth of Pennsylvania. EPA is proposing to approve the extension of the attainment date for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve the extension of the attainment date for the New Jersey portion of the Philadelphia Area in a separate rulemaking in this **Federal Register**.

DATES: Written comments must be received on or before December 9, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0574 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: rehn.brian@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0574, Brian K. Rehn, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR2010–0574. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the States' submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Maria Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Requests for Attainment Date Extension for the Philadelphia Area

The Commonwealth of Pennsylvania and the States of Maryland and Delaware (the States) requested a one-year attainment date extension for the Philadelphia Area on January 8, 2010, March 12, 2010, and May 18, 2010, respectively. The Philadelphia Area, which is classified as moderate for the 1997 8-hour ozone NAAQS, consists of: Cecil County in Maryland; Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; the entire State of Delaware; and Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem Counties in New Jersey. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the CAA, is June 15, 2010. The States' requested that the attainment date be extended to June 15, 2011. As stated above, EPA is approving the extension of the attainment date for the New Jersey portion of the Philadelphia Area in a separate rulemaking notice in today's **Federal Register.**

II. CAA Requirements and EPA Actions Regarding One-Year Extensions

Section 172(a)(2)(C) of subpart 1 of the CAA provides for EPA to extend the attainment date for an area by one year if the State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan and no more than a minimal number of exceedances of the NAAQS has occurred in the attainment year. Up to two one-year extensions may be issued for a single nonattainment area. Section 181(a)(5) of subpart 2 contains a similar provision for the ozone NAAQS, but instead of providing for an extension where there has been a "minimal" number of exceedances, it allows an extension only if there is no more than one exceedance of the NAAQS in the year proceeding the extension year. However, the language in section 181(a)(5) reflects the form of the 1-hour ozone NAAQS and not the 1997 8-hour ozone NAAQS. 40 CFR

51.907 sets forth how sections 172(a)(2)(C) and 181(a)(5) apply to an area subject to the 1997 8-hour ozone NAAQS. Under 40 CFR 51.907, an area will meet the requirement of section 172(a)(2)(C)(ii) or 181(a)(5)(B) of the CAA pertaining to one-year extensions of the attainment date if:

(a) For the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less;

(b) For the second 1-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less; and

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.

EPA's review of the actual ozone air quality data in the Air Quality System shows that the 4th highest daily average 8-hour ozone concentrations for the 2009 attainment year ozone season, for all monitors in the Philadelphia Area are measured at 0.084 ppm or less (Table 1), as required by 40 CFR 51.907(a). The monitoring data has been quality controlled and quality assured. In the Technical Support Document (TSD) for this action, EPA evaluates the air quality monitoring data for the Philadelphia Area. For details, please refer to EPA's TSD.

TABLE 1—MONITORING DATA FOR 8-HOUR OZONE IN THE PHILADELPHIA AREA

Site ID	County/state	Year	4th Max 8-hr (ppm)
10–001–0002	Kent/Delaware	2009	.066
10–003–1007	New Castle/Delaware	2009	.068
10–003–1010	New Castle/Delaware	2009	.068
10–003–1013	New Castle/Delaware	2009	.069
10–005–1002	Sussex/Delaware	2009	.067
10–005–1003	Sussex/Delaware	2009	.069
24–015–0003	Cecil/Maryland	2009	.072
42–017–0012	Bucks/Pennsylvania	2009	.074
42–029–0100	Chester/Pennsylvania	2009	.067
42–045–0002	Delaware/Pennsylvania	2009	.065
42–091–0013	Montgomery/Pennsylvania	2009	.070
42–101–0004	Philadelphia/Pennsylvania	2009	.059
42–101–0024	Philadelphia/Pennsylvania	2009	.072
34–001–0006	Atlantic/New Jersey	2009	.071
34–007–1001	Camden/New Jersey	2009	.071
34–011–0007	Cumberland/New Jersey	2009	.072
34–015–0002	Gloucester/New Jersey	2009	.071
34–021–0005	Mercer/New Jersey	2009	.071
34–029–0006	Ocean/New Jersey	2009	.071

EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) The States have complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan. The applicable ozone implementation plans can be found at 40 CFR 52.420, 40 CFR 52.1070, 40 CFR 52.2020, for the States of Delaware, Maryland, and Pennsylvania, respectively; and

(2) The Philadelphia Area's 4th highest daily 8-hour monitored value during the 2009 ozone season is 0.084 ppm or less.

Therefore, EPA approves the States' attainment date extension requests for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area. As a result, the charts in 40 CFR 81.308, 40 CFR 81.321, and 40 CFR 81.339 are being modified to reflect EPA's approval of the States' attainment date extension request. Those charts are entitled "Delaware-Ozone (8-Hour Standard)", "Maryland-Ozone (8–Hour Standard)", and "Pennsylvania-Ozone (8-Hour Standard)", respectively.

III. Proposed Action

EPA is proposing to approve the attainment date extension from June 15, 2010 to June 15, 2011 for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area, which is classified as moderate for the 1997 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 proposed extension of the attainment deadline for the 1997 8-hour ozone NAAQS for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: October 28, 2010.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2010–28256 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1153]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 7, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1153, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Harrison County, Iowa, and Incorporated Areas				
Boyer River (Left Overbank)	Approximately 0.66 mile upstream of I–29	None	+1003	Unincorporated Areas of Harrison County.
	Approximately 150 feet upstream of 296th Street	None	+1018	
Boyer River (Left Overbank) (overflow effects from Missouri River).	From the Pottawattamie County boundary to approximately 0.66 mile upstream of I–29.	None	+1003	Unincorporated Areas of Harrison County.
Boyer River (Right Overbank)	Approximately 200 feet upstream of I–29	None	+1003	City of Missouri Valley, Unincorporated Areas of Harrison County.
	Approximately 150 feet upstream of 296th Street	None	+1018	
Boyer River (Right Overbank) (overflow effects from Missouri River).	From the Pottawattamie County boundary to approximately 200 feet upstream of I–29.	None	+1003	Unincorporated Areas of Harrison County.
Boyer River (Riverward)	Approximately 250 feet downstream of I–29	None	+1003	Unincorporated Areas of Harrison County.
	Approximately 150 feet upstream of 296th Street	None	+1018	
Boyer River (Riverward) (overflow effects from Missouri River).	From the Pottawattamie County boundary to approximately 250 feet downstream of I–29.	None	+1003	Unincorporated Areas of Harrison County.
Little Sioux River (Left Overbank).	At the confluence with the Missouri River	None	+1029	City of Little Sioux, Unincorporated Areas of Harrison County.
	Approximately 2,000 feet upstream of 120th Street	None	+1040	
Little Sioux River (Right Overbank).	At the confluence with the Missouri River	None	+1029	Unincorporated Areas of Harrison County.
	Approximately 2,000 feet upstream of 120th Street	None	+1040	
Little Sioux River (Riverward)	At the confluence with the Missouri River	None	+1029	Unincorporated Areas of Harrison County.
	Approximately 2,000 feet upstream of 120th Street	None	+1041	
Missouri River	Approximately 0.88 mile upstream of the Pottawattamie County boundary.	+1003	+1004	City of Missouri Valley, City of Modale, City of Mondamin, Unincorporated Areas of Harrison County.
	At the Monona County boundary	+1032	+1034	
Willow Creek (Left Overbank)	Approximately 1.48 miles upstream of the confluence with the Boyer River.	None	+1006	Unincorporated Areas of Harrison County.
	Approximately 50 feet downstream of Canal Street	None	+1008	
Willow Creek (Left Overbank)	Approximately 0.75 mile upstream of Huron Street	None	+1010	City of Missouri Valley, Unincorporated Areas of Harrison County.
	Approximately 0.45 mile upstream of 291st Street	None	+1021	
Willow Creek (Left Overbank) (backwater effects from Boyer River).	From the confluence with the Boyer River to approximately 1.48 miles upstream of the confluence with the Boyer River.	None	+1006	Unincorporated Areas of Harrison County.
Willow Creek (Left Overbank) (overflow effects from Missouri River).	From approximately 1,850 feet upstream of Huron Street to approximately 0.75 mile upstream of Huron Street.	+1009	+1010	City of Missouri Valley, Unincorporated Areas of Harrison County.
Willow Creek (Right Overbank) (backwater effects from Boyer River).	From the confluence with the Boyer River to approximately 1.8 miles upstream of the confluence with the Boyer River.	None	+1006	Unincorporated Areas of Harrison County.
Willow Creek (Right Overbank) (overflow effects from Missouri River).	Approximately 1.8 miles upstream of the confluence with the Boyer River.	None	+1006	City of Missouri Valley, Unincorporated Areas of Harrison County.
	Approximately 0.45 mile upstream of 291st Street	None	+1011	
Willow Creek (Riverward)	Approximately 0.76 mile upstream of the confluence with the Boyer River.	None	+1010	City of Missouri Valley, Unincorporated Areas of Harrison County.
	Approximately 0.45 mile upstream of 291st Street	None	+1021	
Willow Creek (Riverward) (backwater effects from Boyer River).	From the confluence with the Boyer River to approximately 0.76 mile upstream of the confluence with the Boyer River.	None	+1010	Unincorporated Areas of Harrison County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

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

∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Little Sioux
Maps are available for inspection at City Hall, 407 1st Street, Little Sioux, IA 51545.

City of Missouri Valley
Maps are available for inspection at the City Clerk's Office, 223 East Erie Street, Missouri Valley, IA 51555.

City of Modale
Maps are available for inspection at City Hall, 310 East Palmer Street, Modale, IA 51556.

City of Mondamin
Maps are available for inspection at City Hall, 120 South Main Street, Mondamin, IA 51557.

Unincorporated Areas of Harrison County
Maps are available for inspection at the Harrison County Zoning Administration Building, 301 North 6th Avenue, Logan, IA 51546.

Mercer County, New Jersey (All Jurisdictions)

Assunpink Creek	At the confluence with the Delaware River	+23	+25	City of Trenton.
	Approximately 120 feet upstream of Jackson Street	+24	+25	
Beden Brook	At Princeton Avenue (approximately 800 feet south of the intersection of Princeton Avenue and East Prospect Street).	None	+164	Borough of Hopewell.
	At parking lot approximately 710 feet south of the intersection of Princeton Avenue and East Prospect Street.	None	+164	
Delaware River	Approximately 1,000 feet downstream of U.S. Route 1 (Trenton-Morrisville Toll Bridge).	+20	+19	City of Trenton, Township of Ewing, Township of Hopewell.
	Approximately 0.5 mile upstream of the confluence of Moores Creek and the Delaware River.	+60	+61	
Delaware River	Approximately 2.2 miles downstream of U.S. Route 1 (Trenton-Morrisville Toll Bridge).	+17	+18	City of Trenton, Township of Hamilton.
	Approximately 1.8 miles downstream of U.S. Route 1 (Trenton-Morrisville Toll Bridge).	+17	+18	
Jacobs Creek	At the confluence with the Delaware River	+47	+46	Township of Ewing, Township of Hopewell.
	Approximately 0.4 mile upstream of State Route 29 (River Road).	+47	+46	
Miry Run	At the Township of Hamilton/Township of West Windsor corporate limits.	None	+72	Township of Robbinsville, Township of West Windsor.
	Approximately 1,150 feet downstream of Pond Road	+71	+72	
Moores Creek	At the confluence with the Delaware River	+59	+60	Township of Hopewell.
	Approximately 0.7 mile downstream of Valley Road	None	+60	
Stony Brook	Approximately 75 feet downstream of Pennington-Rocky Hill Road.	None	+147	Borough of Pennington.
	Approximately 1,575 feet upstream of Pennington-Rocky Hill Road.	None	+149	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Hopewell
Maps are available for inspection at the Hopewell Borough Hall, 4 Columbia Avenue, Hopewell, NJ 08525.

Borough of Pennington
Maps are available for inspection at Borough Hall, 30 North Main Street, Pennington, NJ 08534.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
City of Trenton Maps are available for inspection at City Hall, 319 East State Street, Trenton, NJ 08608.				
Township of Ewing Maps are available for inspection at the Township Municipal Building, 2 Jake Garzio Drive, Ewing, NJ 08628.				
Township of Hamilton Maps are available for inspection at the Township Municipal Building, 2090 Greenwood Avenue, Hamilton, NJ 08609.				
Township of Hopewell Maps are available for inspection at the Hopewell Township Municipal Building, 201 Washington Crossing, Titusville, NJ 08560.				
Township of Robbinsville Maps are available for inspection at the Township Municipal Building, One Washington Boulevard, Robbinsville, NJ 08691.				
Township of West Windsor Maps are available for inspection at the Township Municipal Building, 271 Clarksville Road, West Windsor, NJ 08550.				
Nash County, North Carolina, and Incorporated Areas				
Cokey Swamp	Approximately 90 feet downstream of Old Wilson Road (Secondary Road 1002).	+106	+107	City of Rocky Mount.
	Approximately 1.1 mile upstream of Old Wilson Road (Secondary Road 1002).	None	+118	
Cowlick Creek	Just upstream of U.S. Highway 64	+80	+79	City of Rocky Mount.
	Just downstream of Cortland Avenue	+95	+92	
Cypress Creek	At the confluence with the Tar River	+170	+171	Unincorporated Areas of Nash County.
	Approximately 300 feet upstream of Lake Royale Road (Secondary Road 1316).	+170	+171	
Fishing Creek	Just upstream of the railroad	+98	+97	Unincorporated Areas of Nash County.
	Approximately 50 feet downstream of Ward Road (Secondary Road 1502).	+129	+132	
Grape Branch	Approximately 200 feet upstream of Beechwood Drive	+108	+107	City of Rocky Mount, Unincorporated Areas of Nash County.
	Approximately 1,100 feet upstream of Beechwood Drive.	+110	+107	
Indian Branch	Approximately 175 feet downstream of Gay Road (Secondary Road 1268).	+71	+70	City of Rocky Mount.
	Approximately 190 feet upstream of Hunting Lodge Drive.	None	+91	
Little Cokey Swamp	Approximately 250 feet downstream of Greenpasture Road (Secondary Road 1141).	+92	+93	City of Rocky Mount.
	Approximately 50 feet downstream of Kingston Avenue.	+129	+130	
Little Cokey Swamp Tributary	At the confluence with Little Cokey Swamp	+106	+105	City of Rocky Mount.
	Approximately 200 feet upstream of South Church Street.	None	+126	
Little Creek	Approximately 500 feet downstream of the railroad	+198	+199	Town of Middlesex, Unincorporated Areas of Nash County.
	Approximately 0.5 mile upstream of Debnam Road	None	+278	
Maple Creek	Approximately 0.3 mile upstream of Bethlehem Road (Secondary Road 1142).	+110	+111	City of Rocky Mount, Unincorporated Areas of Nash County.
	Approximately 280 feet upstream of South Old Carriage Road.	None	+166	
Parkers Canal	At the confluence with Cowlick Creek	+80	+79	City of Rocky Mount.
	Approximately 60 feet downstream of Atlantic Avenue	+96	+98	
Pig Basket Creek	Approximately 900 feet upstream of Red Oak Road (Secondary Road 1003).	+128	+127	Town of Red Oak, Unincorporated Areas of Nash County.
	Approximately 0.4 mile upstream of Taylors Store Road (Secondary Road 1004).	+156	+155	
Polecat Branch	At the confluence with Maple Creek	+111	+112	Unincorporated Areas of Nash County.
	Approximately 0.8 mile upstream of the confluence with Polecat Branch Tributary.	+118	+120	
Sapony Creek	Approximately 200 feet upstream of Sandy Cross Road (Secondary Road 1717).	+133	+132	Unincorporated Areas of Nash County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Stony Creek	Approximately 1,550 feet upstream of NC Highway 58	None	+145	City of Rocky Mount, Town of Nashville, Town of Red Oak.
	Approximately 0.5 mile downstream of Red Oak Road (Secondary Road 1003).	+129	+130	
Swift Creek	Just upstream of U.S. Route 64	+151	+152	City of Rocky Mount, Unincorporated Areas of Nash County.
	Approximately 1.8 miles downstream of the Edgecombe County boundary.	+90	+88	
Tar River	At Red Oak Road (Secondary Road 1003)	+130	+131	City of Rocky Mount, Town of Spring Hope, Unincorporated Areas of Nash County.
	Approximately 150 feet downstream of South Old Carriage Road.	+132	+133	
	At the confluence with Cypress Creek	+170	+171	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Rocky Mount
Maps are available for inspection at the Planning Department, 331 South Franklin Street, Rocky Mount, NC 27802.

Town of Middlesex
Maps are available for inspection at the Town Hall, 10232 South Nash Street, Middlesex, NC 27557.

Town of Nashville
Maps are available for inspection at the Town Hall, 499 South Barnes Street, Nashville, NC 27856.

Town of Red Oak
Maps are available for inspection at the Town Hall, 8406 Main Street, Red Oak, NC 27868.

Town of Spring Hope
Maps are available for inspection at the Town Hall, 118 West Railroad Street, Spring Hope, NC 27882.

Unincorporated Areas of Nash County
Maps are available for inspection at the Nash County Planning Department, 120 West Washington Street, Suite 2110, Nashville, NC 27856.

El Paso County, Texas, and Incorporated Areas

Flow Path 16	Just upstream of Donald Drive	None	+3960	City of El Paso.
	Approximately 1,000 feet upstream of Rushing Drive	+3977	+3975	
Flow Path Number 27 Playa Drain.	Just upstream of Vocational Drive	None	+3663	City of El Paso.
	Just downstream of Clark Drive	None	+3699	
Flow Path Number 29	Just upstream of Del Monte Street	None	+3738	City of El Paso.
	Just downstream of Prestcott Drive	None	+3771	
Flow Path Number 32	Just upstream of Barron Road	+3668	+3670	City of El Paso.
	Just downstream of Patrol Drive	+3714	+3716	
Flow Path Number 36	Just upstream of the confluence with Mesa Spur Drain.	+3662	+3666	City of El Paso.
	Approximately 0.75 mile upstream of the confluence with Mesa Spur Drain.	+3720	+3724	
Flow Path Number 41	Approximately 0.37 mile downstream of the confluence of Flow Path Number 41A.	None	+3871	City of El Paso.
	Approximately 0.48 mile upstream of the confluence of Flow Path Number 41A.	None	+3987	
Flow Path Number 44	Approximately 0.67 mile upstream of the confluence of Flow Path Number 43.	None	+3923	Unincorporated Areas of El Paso County.
	Approximately 1.04 miles upstream of the confluence of Flow Path Number 43.	None	+3956	
Flow Path Number 45	Approximately 0.57 mile downstream of the confluence of Flow Path Number 45A.	None	+3783	Town of Vinton, Unincorporated Areas of El Paso County.
	Approximately 1.50 miles upstream of the confluence of Flow Path Number 45B.	None	+4515	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Horizon Arroyo Stream 2	Approximately 65 feet downstream of I–10 (Frontage Road).	+3752	+3747	Unincorporated Areas of El Paso County.
	Just downstream of Access Road	+3888	+3892	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of El Paso
Maps are available for inspection at City Hall, 2 Civic Center Plaza, El Paso, TX 79901.

Town of Vinton
Maps are available for inspection at 436 East Vinton Road, Vinton, TX 79821.

Unincorporated Areas of El Paso County
Maps are available for inspection at 500 East San Antonio Street, Room 407, El Paso, TX 79901.

Bayfield County, Wisconsin, and Incorporated Areas

Lake Superior	Entire shoreline within community	None	+605	City of Bayfield, City of Washburn, Red Cliff Band of Lake Superior Chippewa, Unincorporated Areas of Bayfield County.
Lower Eau Claire Lake	Entire shoreline within community	None	+1124	Unincorporated Areas of Bayfield County.
Middle Eau Claire Lake	Entire shoreline within community	None	+1128	Unincorporated Areas of Bayfield County.
Namekagon Lake	Entire shoreline within community	None	+1398	Unincorporated Areas of Bayfield County.
Upper Eau Claire Lake	Entire shoreline within community	None	+1137	Unincorporated Areas of Bayfield County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bayfield
Maps are available for inspection at 125 South 1st Street, Bayfield, WI 54814.

City of Washburn
Maps are available for inspection at 119 Washington Avenue, Washburn, WI 54891.

Red Cliff Band of Lake Superior Chippewa
Maps are available for inspection at 88385 State Highway 13, Bayfield, WI 54814.

Unincorporated Areas of Bayfield County
Maps are available for inspection at 117 East 5th Street, Washburn, WI 54891.

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

Dated: October 29, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–28224 Filed 11–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1155]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 7, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1155, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Gilmer County, Georgia, and Incorporated Areas				
Cartecay River	Approximately 0.24 mile upstream of the confluence with Owltown Creek.	+1291	+1290	Unincorporated Areas of Gilmer County.
	Approximately 1.12 miles upstream of Holt Bridge Road.	None	+1519	

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

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Gilmer County

Maps are available for inspection at the Gilmer County Courthouse, 1 Broad Street, Ellijay, GA 30540.

La Porte County, Indiana, and Incorporated Areas

Lake Michigan	Entire shoreline within community	None	+585	City of Michiana Shores, Unincorporated Areas of La Porte County.
Lake Michigan	Entire shoreline within community	+587	+585	Town of Long Beach.
Lake Michigan	Entire shoreline within community	+584	+585	City of Michigan City.
Otter Creek	At the confluence with Trail Creek	None	+592	Town of Pottawattamie Park.
	Approximately 1,000 feet downstream of Karwick Road.	None	+598	
Trail Creek	At the confluence with Lake Michigan	+584	+585	City of Michigan City.
	Approximately 1,100 feet upstream of E Street	+584	+585	
Trail Creek	Approximately 1,100 feet upstream of Liberty Trail Road.	None	+591	Town of Pottawattamie Park.
	At the confluence with Otter Creek	None	+592	
White Ditch	Approximately 160 feet downstream of Michiana Drive	None	+604	City of Michiana Shores, City of Michigan City, Unincorporated Areas of La Porte County.
	Approximately 1,840 feet upstream of Oakdale Drive	None	+607	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Michiana Shores

Maps are available for inspection at City Hall, 601 El Portal South Drive, Michiana Shores, IN 46360.

City of Michigan City

Maps are available for inspection at City Hall, 100 East Michigan Boulevard, Michigan City, IN 46360.

Town of Long Beach

Maps are available for inspection at the Town Hall, 2400 Oriole Trail, Long Beach, IN 46360.

Town of Pottawattamie Park

Maps are available for inspection at the La Porte County Government Complex, 809 State Street, Suite 503A, La Porte, IN 46350.

Unincorporated Areas of La Porte County

Maps are available for inspection at the La Porte County Government Complex, 809 State Street, Suite 503A, La Porte, IN 46350.

Butte County, South Dakota, and Incorporated Areas

Belle Fourche River	Just upstream of U.S. Route 212	+3012	+3008	City of Belle Fourche, Unincorporated Areas of Butte County.
	Approximately 0.7 mile upstream of Fairground Road	+3017	+3019	
Hay Creek	Approximately 500 feet downstream of U.S. Route 85	+3041	+3042	City of Belle Fourche, Unincorporated Areas of Butte County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.9 mile downstream of Black Angus Lane.	None	+3089	
Redwater River	Approximately 1,200 feet downstream of U.S. Route 212 Business.	+3018	+3016	City of Belle Fourche, Unincorporated Areas of Butte County.
	Approximately 700 feet upstream of U.S. Route 212 Business.	+3024	+3023	
Willow Creek	Approximately 0.5 mile downstream of Snoma Street	None	+3022	City of Belle Fourche, Unincorporated Areas of Butte County.
	Approximately 1,650 feet downstream of West Wood Road.	None	+3183	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Belle Fourche

Maps are available for inspection at 511 6th Avenue, Belle Fourche, SD 57717.

Unincorporated Areas of Butte County

Maps are available for inspection at 830 6th Avenue, Belle Fourche, SD 57717.

Custer County, South Dakota, and Incorporated Areas

Battle Creek	Approximately 1.6 miles downstream of Chicago and Northwest Railroad.	None	+3262	Town of Hermosa, Unincorporated Areas of Custer County.
	Approximately 600 feet upstream of Paradise Road ...	+3390	+3388	
Ferguson Split Flow—Battle Creek.	Approximately 0.5 mile downstream of Fairgrounds Place.	None	+3260	Town of Hermosa, Unincorporated Areas of Custer County.
	Approximately 130 feet upstream of Donna Street	+3290	+3292	
Grace Coolidge Creek	Approximately 180 feet downstream of the divergence from Battle Creek.	+3345	+3341	Unincorporated Areas of Custer County.
	Approximately 3.1 miles upstream of State Highway 36.	None	+3473	
Railroad Spill Flow—Battle Creek.	Just upstream of the confluence with Battle Creek	None	+3290	Town of Hermosa, Unincorporated Areas of Custer County.
	Just downstream of the divergence from Battle Creek	None	+3294	
South Bank Split Flow—Battle Creek.	Approximately 1,200 feet upstream of the confluence with Battle Creek.	None	+3310	Unincorporated Areas of Custer County.
	Approximately 870 feet upstream of Yellow Oak Road	None	+3325	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Hermosa

Maps are available for inspection at 420 Mount Rushmore Road, Custer, SD 57730.

Unincorporated Areas of Custer County

Maps are available for inspection at 420 Mount Rushmore Road, Custer, SD 57730.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Forest County, Wisconsin, and Incorporated Areas				
Metonga Lake	Entire Shoreline within community	None	+1599	Unincorporated Areas of Forest County.
Peshtigo Lake	Entire Shoreline within community	None	+1591	Unincorporated Areas of Forest County.
Roberts Lake	Entire Shoreline within community	None	+1594	Unincorporated Areas of Forest County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Forest County

Maps are available for inspection at 200 East Madison Avenue, Crandon, WI 54520.

La Crosse County, Wisconsin, and Incorporated Areas				
Black River	Approximately 0.5 mile downstream of the confluence with Davis Creek.	None	+694	Unincorporated Areas of La Crosse County.
	Approximately 3.36 miles upstream of the confluence with Hardies Creek.	None	+706	
Ebner Coulee Main Channel	Approximately 1,584 feet downstream of 29th Street ..	None	+659	City of La Crosse, Unincorporated Areas of La Crosse County.
	Approximately 1,584 feet upstream of 29th Street	None	+697	
Ebner Coulee Southeast Bank.	Approximately 52.8 feet upstream of 29th Street	None	+665	City of La Crosse.
	Approximately 528 feet upstream of 29th Street	None	+673	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of La Crosse

Maps are available for inspection at City Hall, 400 La Crosse Street, La Crosse, WI 54601.

Unincorporated Areas of La Crosse County

Maps are available for inspection at 400 4th Street North, La Crosse, WI 54601.

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

Dated: October 29, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–28225 Filed 11–8–10; 8:45 am]

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Notices

Federal Register
Vol. 75, No. 216
Tuesday, November 9, 2010

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA): Section 515 Multi-Family Housing Preservation Revolving Loan Fund (PRLF) Demonstration Program for Fiscal Year 2011

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

Overview Information

SUMMARY: The Rural Housing Service of Rural Development announces the availability of funds and the timeframe to submit applications for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a demonstration program to provide revolving loans for the preservation and revitalization of low-income Multi-Family Housing (MFH). Housing that is assisted by this demonstration program must be financed by Rural Development through its MFH loan program under Sections 515, 514 and 516 of the Housing Act of 1949. The goals of this demonstration program will be achieved through loans made to intermediaries. The intermediaries will establish their programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of low income Sections 515, 514 and 516 MFH as affordable housing.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., Eastern Time, January 10, 2011. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Timothy James, Financial and Loan Analyst, Multi-Family Housing STOP 0781 (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, or Michael Steininger, Director Guaranteed Loan Division, Multi-Family Housing STOP 0781 (Room 1263–S) 1400 Independence Avenue, SW., Washington, DC 20250–0781 or by telephone at (202) 720–1094 or (202) 720–1610, TDD (302) 857–3585 or via e-mail at *Michael.Steininger@wdc.usda.gov* or *Timothy.James@wdc.usda.gov* (Please note the phone numbers are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 (2005) *et seq.,* OMB must approve all "collections of information" by Rural Development. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A)) Because this NOFA will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.415.

Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Act) (Division A of Pub. L. 111–80), October 21, 2009 provided funding for, and authorizes Rural Development to, establish a revolving loan fund demonstration program for the preservation and revitalization of the Sections 515, 514 and 516 Multi-Family Housing portfolio. The Multi-Family Housing program is authorized by Sections 514, 515 and 516 of the Housing Act of 1949 as amended, provides Rural Development the authority to make loans for low income Multi-Family Housing, farm labor housing, and related facilities.

Program Administration

I. Funding Opportunities Description

This NOFA requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income MFH properties within the Rural Development Sections 515, 514 and 516 Multi-Family Housing portfolio. Rural Development's regulations for the Section 514, 515 and 516 Multi-Family Housing Program are published at 7 CFR part 3560.

Housing that is constructed or repaired must meet the Rural Development design and construction standards and the development standards contained in 7 CFR part 1924, Subparts A and C, respectively. Once constructed, Section 514, 515, and 516 Multi-Family Housing must be managed in accordance with the program's regulation, 7 CFR part 3560. Tenant eligibility is limited to persons who qualify as a very low-, or low-income, household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than Rural Development, such as U.S. Department of Housing and Urban Development Section 8 assistance or Low Income Housing Tax Credit assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR Sections 3560.152, 3560.577, and 3560.624.

II. Award Information

The Act, made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low income Multi-Family housing project. The total amount of funding available for this program is $14,099,227. Loans to intermediaries under this demonstration program shall have an interest rate of no more than one percent and the Secretary of Agriculture may defer the interest and principal payment to Rural Development for up to three years during the first three years of the loan. The term of such loans shall not exceed 30 years. Funding priority will be given to entities with equal or greater matching funds from third parties,

including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of Multi-Family Housing.

Funding Restrictions

No loan made to a single intermediary applicant under this demonstration program may exceed $2,125,000 and any such loan may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas. All PRLF loans will have an obligation expiration period of two years from the date of obligation.

Prior fiscal years PRLF loans that were obligated and not closed within the above two years obligation period must be de-obligated to allow more immediate program use unless a six month extension is granted by the National Office.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

III. Eligibility Information

Applicant Eligibility

(1) Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are private non-profit organizations, which may include faith based organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security, and repaying the proposed loan.

(ii) A proven record of successfully assisting low-income Multi-Family Housing projects. Such record will include recent experience in loan making and loan servicing that is similar in nature to the loans proposed for the PRLF demonstration program. The applicant must provide documentation of a delinquency and loss rate not which does not exceed four percent. The applicant will be responsible for providing such information to Rural Development.

(iii) A staff with loan making and servicing experience.

(iv) A plan showing Rural Development, that the ultimate recipients will only use the funds to preserve low-income Multi-Family Housing projects.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan evidenced by the fiscal and managerial capabilities of the proposed intermediary.

(ii) The amount of the loan, together with other funds available, is adequate to complete the preservation or revitalization of the project.

(iii) The intermediary's prior calendar year audit is an unqualified audited opinion signed by an independent certified public accountant acceptable to the agency and performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The unqualified audited opinion must provide a statement relating to the accuracy of the financial statements.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs." In addition, intermediaries and their principals must not be delinquent on Federal debt or be Federal judgment debtors.

(e) The intermediary and its principal officers (including immediate family) must have no legal or financial interest in the ultimate recipient.

(f) The intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.25 for the fiscal year immediately prior to the year of application. The DSCR is the financial ratio the loan committee will use to determine an applicant's capacity to borrow and service additional debt.

The loan committee will use the intermediary's Earnings Before Interest and Taxes (EBIT) to determine DSCR. EBIT is determined by adding net income or net loss to depreciation and interest expense. The loan committee will compare the principal and interest payment multiplied by the DSCR to the EBIT derived from the applicants consolidated income statement. For example, if an applicant requests a loan amount of $2,000,000 at a one percent interest rate amortized over 30 years, the principal and interest payments will be $77,193, annually. Therefore, an applicant who requests $2,000,000 needs an EBIT of at least $96,491.00 ($77,193 × 1.25). Only debt service from unrestricted revolving loans will be considered in the above calculation. An unrestricted loan is an account in which the accumulated revenues are not dictated by a donor or sponsor.

(g) Intermediaries that have received one or more PRLF loans may apply for and be considered for subsequent PRLF loans provided all the following are met:

(i) For prior PRLF loans at least 80 percent of each of an intermediary's PRLF loans must have been disbursed to eligible ultimate recipients;

(ii) Intermediaries requesting subsequent loans must meet the requirements of section III(2) of this NOFA;

(iii) The delinquency rate of the outstanding loans of the intermediary's PRLF revolving fund does not exceed 4 percent at the time of application for the subsequent loan;

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with Rural Development;

(v) Subsequent loans will not exceed $1 million each and not more than one loan will be approved by Rural Development for an intermediary in any single fiscal year unless the request is authorized by a PRLF appropriation; and

(vi) Total outstanding PRLF indebtedness of an intermediary to Rural Development will not exceed $15 million at any time.

Only eligible applicants will be scored and ranked. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the NOFA for further information on funding priorities.

(2) Eligibility requirements—Ultimate recipients.

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

(i) Currently have a Rural Development Section 515, 514 loans, or 516 grant for the property to be assisted by the PRLF demonstration program.

(ii) Certify that the principal officers (including their immediate family) of the ultimate recipient, hold no legal or financial interest in the intermediary.

(iii) Be in compliance with all Rural Development program requirements or have an Agency approved workout plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government including a non-tax judgment lien (other than a judgment in the U.S. tax courts), by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the PRLF.

(c) PRLF loan funds may not be used to satisfy the delinquency. The ultimate recipient cannot be currently debarred or suspended from Federal Government programs.

(d) There is a continuous need for the property in the community as affordable housing.

Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this NOFA:

(a) PRLF intermediaries will be required to provide Rural Development with the following reports:

(i) An annual audit;

(A) The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. The audit period will be set by the intermediary. The intermediary will notify Rural Development of the date. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with GAGAS and include such tests of the accounting records as the auditor considers necessary in order to express an unqualified audited opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by Office Management and Budget (OMB) Circular A–133 should submit audits made in accordance with that circular.

(ii) Quarterly or semiannual performance reports (due to Rural Development 30 days after the end of the fiscal quarter or half);

(A) Performance reports will be required quarterly during the first year after loan closing. Thereafter, performance reports will be required semiannually. Also, Rural Development may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its workout plan or Loan Agreement, or Rural Development determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These performance reports shall contain information only on the PRLF, or if other funds are included, the PRLF portion shall be segregated from the others; and in the case where the intermediary has more than one PRLF from Rural Development, a separate report shall be made for each PRLF.

(C) The performance reports will include OMB Standard Form 269, Financial Status Report and OMB Standard Form 272, Federal Cash Transaction Report. These reports will provide information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and other reports as Rural Development may require from time to time regarding the conditions of the loan.

(b) Security will consist of a pledge by the intermediary of all assets now or hereafter placed in the PRLF, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, Rural Development will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant in the loan agreement that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts Rural Development may request to protect Rural Development's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to Rural Development. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients may be assignable.

(c) RHS may consider, on a case by case basis, subordinating its security interest on the ultimate recipient's property to the lien of the intermediary so that Rural Development has a junior lien interest when an independent appraisal verifies the Rural Development subordinated lien will continue to be fully secured.

(d) The term of the loan to an ultimate recipient may not exceed the less of 30 years or the remaining term of the Rural Development loan.

(e) When loans are made to ultimate recipients, restrictive-use provisions must be incorporated, as outlined in 7 CFR Section 3560.662.

(f) The policies and regulations contained in 7 CFR part 1901, Subpart F regarding historical and archaeological properties apply to all loans funded under this NOFA.

(g) The policies and regulations contained in 7 CFR part 1940, Subpart G regarding environmental assessments apply to all loans to ultimate recipients funded under this NOFA. Loans to intermediaries under this program will be considered a categorical exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, "Environmental Checklist for Categorical Exclusions," by Rural Development.

(h) An "Intergovernmental Review," will be conducted in accordance with the procedures contained in 7 CFR part 3015, Subpart V, if the applicant is a cooperative.

(2) The intermediary agrees to the following:

(a) To obtain written Rural Development approval, before the first lending of PRLF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) The intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from Rural Development before making any significant changes in forms, security policy, or the intermediary's workout plan. Rural Development may approve changes in forms, security policy, or workout plans at any time upon a written request from the intermediary and determination by Rural Development that the change will not jeopardize repayment of the loan or violate any requirement of this NOFA or other Rural Development regulations. The intermediary must comply with the workout plan approved by Rural Development so long as any portion of the intermediary's PRLF loan is outstanding;

(c) To allow Rural Development to take a security interest in the PRLF, the intermediary's portfolio of investments derived from the proceeds of the loan award, and other rights and interests as Rural Development may require;

(d) To return, as an extra payment on the loan any funds that have not been used in accordance with the intermediary's workout plan by a date two years from the date of the loan agreement. The intermediary acknowledges that Rural Development may cancel the approval of any funds not yet delivered to the intermediary if funds have not been used in accordance with the intermediary's workout plan within the two-year period. Rural Development, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than three additional years. If any loan funds have not been used by five years from the date of the loan agreement, the

approval will be canceled for any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the workout plan. In accordance with the Rural Development approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(e) The intermediary will be required to enter into a Rural Development approved loan agreement and promissory note. The intermediary will receive a 30-year loan at a one percent interest rate. The loan will be deferred for up to three years if requested in the intermediary's work plan.

(f) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing by preserving and regulating existing properties financed with 514, 515, and 516 funds. They must also be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

(g) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Rural Development concurrence is required prior to final approval of the loan. The intermediary must submit a request for Rural Development concurrence of a proposed loan to an ultimate recipient. Such request must include:

(i) Certification by the intermediary that:

(A) The proposed ultimate recipient is eligible for the loan;

(B) The proposed loan is for eligible purposes;

(C) The proposed loan complies with all applicable statutes and regulations; and

(D) Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest in the intermediary.

(ii) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow Rural Development to determine the:

(A) Name and address of the ultimate recipient;

(B) Loan purposes;

(C) Interest rate and term;

(D) Location, nature, and scope of the project being financed;

(E) Other funding included in the project;

(F) Nature and lien priority of the collateral; and

(G) Environmental impacts of this action. This will include an original Form RD 1940–20, "*Request for Environmental Information,*" completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed Federal Emergency Management Agency (FEMA) Form 81–93, "*Standard Flood Hazard Determination*." If the age of the building is over 50 years or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact Rural Development to begin Section 106 of the National Historic Preservation Act of 1966 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact Rural Development to analyze any effects as outlined in 7 CFR part 1940, subpart G, exhibit C. The intermediary will assist Rural Development in any additional requirements necessary to complete the environmental review.

(ii) Such other information as Rural Development may request on specific cases.

(h) Upon receipt of a request for concurrence in a loan to an ultimate recipient, Rural Development will:

(i) Review the material submitted by the intermediary for consistency with Rural Development's preservation and revitalization principles which include the following;

(A) There is a continuing need for the property in the community as affordable housing. If Rural Development determines there is no continuing need for the property, the ultimate recipient is ineligible for the loan;

(B) When the transaction is complete, the property will be owned and controlled by eligible Section 514, 515, or T516 borrowers;

(C) The transaction will address the physical needs of the property;

(D) Existing tenants will not be displaced because of increased post transaction rents;

(E) Post transaction basic rents will not exceed comparable market rents; and

(F) Any equity loan amount will be supported by a market value appraisal.

(i) The Intermediary shall pledge as collateral for non-Rural Development funds its PRLF Revolving Fund, including its portfolio of investments derived from the proceeds of other funds and this loan award.

(ii) Issue a letter concurring with the loan when all requirements have been met or notify the intermediary in writing the reasons for denial when Rural Development determines it is unable to concur with the loan.

IV. Application and Submission Information

Submission Address

Applications should be submitted to USDA Rural Housing Service; Attention: Timothy James, Financial and Loan Analyst, Multi-Family Housing STOP 0781 (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0781 or Michael Steininger, Director Guaranteed Loan Division, Multi-Family Housing STOP 0781 (Room 1263–S) or by telephone at (202) 720–1094 or (202) 720–1610, TDD (302) 857–3585 or via e-mail or *Timothy.James@wdc.usda.gov, Michael.Steininger@wdc.usda.gov* (Please note the phone numbers are not toll free numbers.)

The application process is in two steps: First, all applicants will submit proposals to the National Office for loan committee review. The initial loan committee will determine if the borrower is eligible, score the application, and rank the applicants according to the criteria established in this NOFA. Only eligible borrowers will be scored. The loan committee will select proposals for further processing. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded applicant may be selected.

Second, after the loan is obligated to the intermediary but prior to the loan closing, the State Office in the applicant's residence or State where the applicant will be doing its intermediary work will provide written approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. Additionally, the State Office will provide written approval of the applicant's binding policy with regard to the amount and form of security to be required.

Once the loan closes, the applicant will be required to comply with the terms of its work plan which describes how the money will be used, the loan agreement, the promissory note and any other loan closing documents. At the time of loan closing, Rural Development and loan recipient shall enter into a loan agreement and a promissory note acceptable to Rural Development. Loans obligated to State offices to intermediaries must close on or before the second anniversary of the dated pre-approval letter mentioned above.

Applicants who have not closed by this date must de-obligate PRLF funds to allow further program use of funds.

Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced and not in narrative form, that lists the following items:

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan requested.

(2) Form RD 4274–1, *Application for Loan (Intermediary Relending Program).*" This form can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD4274-1.PDF.*

(3) A written workout plan and other evidence Rural Development require that demonstrates the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this NOFA. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Rural Development review, and the terms of the contract and its duration must be sufficient to adequately service Rural Development loan through to its ultimate conclusion. If Rural Development determines the personnel lack the necessary expertise to administer the program, the loan request will be denied;

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Rural Development funds for administration of the intermediary's operations and financial assistance for projects;

(c) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Rural Development funding of the loan request;

(d) Include a list of proposed fees and other charges it will assess to the ultimate recipients;

(e) Provide documentation to Rural Development the intermediary has secured commitments of significant financial support from public agencies and private organizations or have received tax credits for the calendar year prior to this NOFA;

(f) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide Rural Development with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will flow from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must at least be addressed by the intermediary's relending plan;

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) Providing technical assistance to ultimate recipients is not required as part of this program. However if the intermediary provides technical assistance, the intermediary will provide specific information as to how and what type of technical assistance the intermediary will provide to the ultimate recipients and potential ultimate recipients. For instance describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least three additional years; and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the PRLF must extend to include a year with a full annual installment on the PRLF loan.

(5) A written agreement of the intermediary to Rural Development agreeing to the audit requirements.

(6) Form RD 400–4, "Assurance Agreement." A copy of which can be obtained at: *http://www.rurdev.usda.gov/regs/forms/0400-04.pdf.*

(7) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(8) Most recent unqualified audit report signed by a CPA and prepared in accordance with GAGAS.

(9) Form RD 1910–11, *Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.*" A copy of which can be obtained at: *http://www.rurdev.usda.gov/regs/forms/1910-11.pdf.*

(10) Form AD–1047, "*Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions.*" A copy of which can be obtained at: *http://www.ocio.usda.gov/forms/doc/AD1047-F-01-92.PDF.*

(11) Exhibit A–1 of RD Instruction 1940–Q, "*Certification for Contracts, Grants, and Loans.*" A copy of which can be obtained at: *http://www.rurdev.usda.gov/me/CBP/const/1940qa1.pdf.*

(12) Copies of the applicant's tax returns for each of the three years prior to the year of application, and most recent audited financial statements.

(13) A separate one-page information sheet listing each of the "Selection Criteria" contained in this NOFA, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required; to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

(14) Financial statements (consolidated or unconsolidated) for the year prior to this NOFA.

(15) A borrower authorization statement allowing Rural Development

the authorization to verify past and present earnings with the preparer of the intermediary's financial statements.

V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Rural Housing Service Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this NOFA and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the loan application closing date set forth in this NOFA.

Selection Criteria

Selection criteria points will be allowed only for factors evidenced by well documented, reasonable plans which provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's application must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not cover one of the categories listed, it will not receive points for that criteria.

(1) *Other funds.* Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(a) The intermediary will obtain non-Rural Development loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. Points for the amount of funds from other sources are as follows:

(i) At least 10 percent but less than 25 percent of the total development cost (as defined in 7 CFR part 3560 Section 3560.11)—5 points;

(ii) At least 25 percent but less than 50 percent of the total development cost—10 points; or

(iii) 50 percent or more of the total project cost—15 points.

(b) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average:

(i) At least 10 percent but less than 25 percent of the total development costs—5 points;

(ii) At least 25 percent but less than 50 percent of total development costs—10 points; or

(iii) 50 percent or more of total development costs—15 points.

(2) *Intermediary contribution.* The Intermediary will contribute its own funds not derived from Rural Development. The Non-Rural Development contributed funds will be placed in a separate account from the PRLF loan account. The intermediary shall contribute funds not derived from Rural Development into a separate bank account or accounts according to their "workout plan". These funds are to be placed into an interest bearing counter-signature-account for three years as set forth in the loan agreement. The counter-signature-account will require a signature from a Rural Development employee and intermediary. After three years, these funds shall be commingled with the PRLF to provide loans to the ultimate recipient for the preservation and revitalization of Section 515 Multi-Family Housing.

The amount of non-Agency derived funds contributed to the PRLF will equal the following percentage of Rural Development PRLF loan:

(a) At least 5 percent but less than 15 percent—15 points;

(b) At least 15 percent but less than 25 percent—30 points; or

(c) 25 percent or more—50 points.

(3) *Experience.* The intermediary has actual experience in the administration of revolving loan funds and the preservation of Multi-Family Housing, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of Multi-Family Housing in order to qualify for points under the selection criteria. If the number of years of experience differs between the two types of above listed experience, the type of experience with the lesser number of years will be used for the selection criteria.

(a) At least one but less than three years—5 points;

(b) At least three but less than five years—10 points;

(c) At least five but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) The DER is the financial ratio used to determine how much debt an applicant has relative to its equity. DER is calculated from the balance sheet by adding the short term or current debt plus the long term debt, and then dividing that number by the intermediary's equity. In order to receive points the intermediary must submit a summary of how the DER was calculated.

(5) *Administrative.* The Administrator may assign up to 25 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that will be considered are the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; economic development plan from the local community, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of an existing revolving loan fund program. The Administrator will document the reasons for the particular point allocation.

VI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, neither the intermediary nor Rural Development will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, familial status, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Rural Development loan funds are involved.

(2) The policies and regulations contained in 7 CFR part 1901, Subpart E apply to this program.

(3) The Rural Housing Service (RHS) Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR Section 3560.60(d).

(5) To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender. The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: November 1, 2010.

Tammye H. Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–28253 Filed 11–8–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, December 7, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held December 7, 2010 at 6 p.m.

ADDRESSES: The meeting will be held at the Ketchikan—Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fjords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 1, 2010.

Jeff DeFreest,

District Ranger.

[FR Doc. 2010–28222 Filed 11–8–10; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) meeting of the Louisiana Advisory Committee to the Commission will convene on Tuesday, November 30, 2010 at 2 p.m. and adjourn at approximately 5 p.m. (CST) at Louisiana State University Honors College, French House, Grand Salon, Highland Road & South Campus Drive, Louisiana State University, Baton Rouge, LA. The purpose of the meeting is to begin planning a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 15, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

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

Dated in Washington, DC, on November 4, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–28218 Filed 11–8–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) planning meeting of the Alabama Advisory Committee to the Commission will convene by conference call at 11 a.m. and adjourn at approximately 12 p.m. on Tuesday, November 23, 2010. The purpose of this meeting is to continue planning a civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 21921588. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of

the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on November 16, 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 8, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Central Regional Office at the above e-mail or street address.

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

Dated in Washington, DC on November 4, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–28219 Filed 11–8–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) orientation and planning meeting of the Kansas Advisory Committee to the Commission will convene by conference call at 11 a.m. and adjourn at approximately 12 p.m. (CST) on Thursday, December 16, 2010. The purpose of this meeting is to provide SAC orientation and continue planning a civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 21264785. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on December 9, 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 30, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

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

Dated in Washington, DC, on November 4, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–28221 Filed 11–8–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Oklahoma Advisory Committee to the Commission will convene by conference call at 10 a.m. and adjourn at approximately 11 a.m. on Monday, December 13, 2010. The purpose of this meeting is to continue planning a civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 20995485. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on December 6, 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 30, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Central Regional Office at the above e-mail or street address.

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

Dated in Washington, DC, on November 4, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–28220 Filed 11–8–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting cancellation.

SUMMARY: On October 12, 2010 (75 FR 63144–63145), the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, November 5, 2010 at the Commission's headquarters. On Wednesday, November 3, 2010, the meeting was cancelled. The decision to cancel the meeting was too close in time to the date and time of the meeting for the

publication of a cancellation notice to appear in advance of the scheduled meeting date. The details of the cancelled meeting are:

DATE AND TIME: Friday, November 5, 2010; 8:30 a.m. EDT

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

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Program Planning

- Approval of Project Outline and Discovery Plan for FY 2011 Enforcement Report.
- Discussion of Possible Briefing Topics for FY 2011.
- Update on Status of Briefing on Disparate Impact in School Discipline Policies.

III. Management & Operations

- Expiration of Commissioner Terms.

IV. State Advisory Committee Issues

- Wisconsin SAC.

V. Approval of Minutes of October 29 Meeting

VI. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: November 5, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–28354 Filed 11–5–10; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA018

Eastern North Pacific Gray Whale; Notice of Petition Availability

AGENCY: National Marine Fisheries Service (NMFS).

ACTION: Notification of availability; request for comments.

SUMMARY: NMFS has received a petition to designate the Eastern North Pacific population of gray whales (*Eschrichtius robustus*) as a depleted stock under the Marine Mammal Protection Act (MMPA). In accordance with the MMPA, NMFS is announcing the receipt of the petition and its availability for public review and is soliciting comments on the petition.

DATES: Comments must be received by close of business on November 24, 2010.

ADDRESSES: A copy of the petition may be requested from Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

You may submit comments, identified by 0648–XA018, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Fax:* 301–713–0376, *Attn:* Chief, Marine Mammal and Sea Turtle Conservation Division.
- *Mail:* Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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.

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: Dr. Shannon Bettridge or Dr. Gregory Silber, Office of Protected Resources, Silver Spring, MD (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Interested persons may obtain the petition for review on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/* or by contacting Dr. Shannon Bettridge or Dr. Gregory Silber [*see* **FOR FURTHER INFORMATION CONTACT**].

The 2008 stock assessment report for Eastern North Pacific gray whales is available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2008whgr-en.pdf.*

Background

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defined the term, "depletion" or "depleted", to include any case in which "* * * the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals * * * determines that a species or a population stock is below its optimum sustainable population." Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)] * * * with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (*i.e.,* K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

The MMPA provides for interested parties to submit a petition to designate a population stock of marine mammals as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

If NMFS makes a positive 60-day finding, NMFS must promptly initiate a review of the status of the affected population stock of marine mammals. No later than 210 days after receipt of the petition, NMFS must publish a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Following a 60-day minimum comment period on the proposed rule, NMFS must publish a final rule within 90 days of the close of the comment period on the proposed rule.

Petition on Eastern North Pacific Gray Whales

On October 21, 2010, NMFS received a petition from the California Gray Whale Coalition to designate the Eastern North Pacific population of gray whales as depleted under the MMPA. The petition alleges that the causes of the decline include the following:

(1) Over-harvesting;

(2) Collapse of cow/calf numbers;

(3) Predation by transient orcas;

(4) Major changes in primary prey and habitat as a result of climate change; and

(5) Reduction in available prey species resulting in starvation.

In accordance with the MMPA, NMFS announces the receipt of this petition, and its availability for public review (*see* **ADDRESSES** and Electronic Access). NMFS also solicits comments and information related to the statements in the petition and additional background on the status of the Eastern North Pacific population of gray whales.

Dated: November 4, 2010.

Thomas C. Eagle,

Acting Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–28282 Filed 11–8–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA022

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on November 30, 2010 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; *telephone:* (603) 431–2300; *fax:* (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Continue development of alternatives for consideration in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), with particular focus on catch monitoring alternatives;

2. Discuss and develop elements of proposed portside sampling program (data priorities, sampling design, potential coverage levels, administration) and measures to confirm self-reported catch; develop Committee recommendations;

3. Discuss and further develop options for funding;

4. Address other outstanding issues related to Amendment 5 as time permits.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: November 4, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–28216 Filed 11–8–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ66

Marine Mammals; File No. 781–1824

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the Northwest Fisheries Science Center (NWFSC, Dr. M. Bradley Hanson, Principal Investigator), 2725 Montlake Blvd. East, Seattle, Washington 98112–2097, has applied for an amendment to Scientific Research Permit No. 781–1824–01.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 9, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 781–1824 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 781–1824 in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Laura Morse, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 781–1824–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 781–1824–00 (issued on March 31, 2006; 74 FR 19875), as amended by Permit No. 781–1824–01

(minor amendment issued on May 26, 2006), authorizes the permit holder to conduct research to determine the abundance, distribution, movement patterns, habitat use, contaminant levels, prey, behavior, energetics, and stock structure of cetacean species in the eastern North Pacific off the coast of Washington, Oregon, and California. These studies are carried out through vessel surveys, photo-identification from large and small vessels, biological sample collection, passive acoustic monitoring, and satellite/radio and data log/time-depth tagging and tracking. The permit authorizes NWFSC to take endangered blue whales (*Balaenoptera musculus*), fin whales (*Balaenoptera physalus*), humpback whales (*Megaptera novaeangliae*), sperm whales (*Physeter macrocephalus*), and Southern Resident killer whales (SRKW, *Orcinus orca*), as well as 15 non-ESA-listed cetacean species. The permit expires on April 14, 2011.

The permit holder is requesting the permit be amended to increase the number of SRKW suction cup tagged (from 10 to 20 animals annually) and to add satellite tagging of six SRKW with dart tags annually. The primary purpose of this request is to determine winter ranges and increase data on distribution patterns of SRKW for use in critical habitat determinations. The activities are requested for the duration of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft supplemental environmental assessment (SEA) has been prepared to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft SEA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 3, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–28271 Filed 11–8–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting the first administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China ("PRC") for the period March 25, 2008, through September 30, 2009. The Department has preliminarily determined that sales have been made below normal value ("NV") by the respondents. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR"). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* November 9, 2010.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–5260, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2008, the Department published in the **Federal Register** an antidumping duty order on steel wire garment hangers ("hangers") from the PRC. *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (October 6, 2008). On October 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of hangers from the PRC for the period March 25, 2008, to September 30, 2009.[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 50772 (October 1, 2009). On October 30, 2009, certain PRC exporters requested that the Department conduct an administrative review. On November 2, 2009, Petitioner[2] also requested that the Department conduct an administrative review of 187 companies. On November 25, 2009, the Department initiated this review of hangers from the PRC with respect to 187 requested companies covering the period of March 25, 2008, through September 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 74 FR 61658 (November 25, 2009) ("*Initiation Notice*").

Between December 28, 2009, and January 21, 2010, we received separate rate certifications or applications from 15 exporters, in addition to those received from the mandatory respondents as discussed in the "Respondent Selection" section below. For a detailed discussion of the separate rate applicants, *see* the "Separate Rates" section below. Additionally, between December 16, 2009, and December 28, 2009, the Department received no-shipment certifications from five companies. For a detailed discussion of the companies that certified they had no shipments during the POR, *see* the "Preliminary Partial Rescission of Administrative Review" section below.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. *See* Memorandum to the Record regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. On April 30, 2010, the Department also published a notice in the **Federal Register** extending the deadline for issuing the preliminary results by 120 days to November 7, 2010.[3] *See First Antidumping Duty*

[1] The Department generally does not include merchandise that entered the United States during the provisional measures gap period ("gap period"), in this case, September 22, 2008, to October 2, 2008, in our margin calculation because these entries are not subject to antidumping duties. *See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France,* 69 FR 3883 (January 27, 2004). However, for the purposes of these preliminary results, we are basing the margin calculation on all reported U.S. sales made during the POR because we are unable to determine whether any of the respondents' reported U.S. sales entered during the gap period.

[2] M&B Metal Products Co., Inc.

[3] Department practice dictates that where a deadline falls on a weekend, the appropriate

Administrative Review of Steel Wire Hangers From the People's Republic of China: Extension of Time Limit for the Preliminary Results, 75 FR 22739 (April 30, 2010).

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended ("the Act"), directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[4] However, section 777A(c)(2) of the Act gives the Department the discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in an administrative review.

On November 30, 2009, the Department released CBP data for entries of subject merchandise during the POR under administrative protective order ("APO") to all interested parties having an APO as of five days after publication of the *Initiation Notice,* and invited comments regarding the CBP data and respondent selection. The Department received comments and rebuttal comments from Petitioner and certain PRC exporters between November 30, 2009, and December 7, 2009.

On February 12, 2010, the Department issued the respondent selection memorandum after assessing its resources and determining that it could only reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Shanghai Wells Hanger Co., Ltd. ("Shanghai Wells") and Shaoxing Dingli Metal Clotheshorse Co., Ltd. ("Shaoxing Dingli") as mandatory respondents.[5] The Department sent the non-market economy ("NME") antidumping questionnaire to Shanghai Wells and Shaoxing Dingli on February 12, 2010.

Period of Review

The POR is March 25, 2008, to September 30, 2009.

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we preliminarily determine that the following companies made no shipments of subject merchandise during the POR: Viet Anh Import-Export Joint Stock Company; Dong Nam A Co., Ltd.; Vietnam Hangers Joint Stock Company; Royal McGoun Chemicals Inc.; and NV Hanger Co., Ltd. As stated above, the Department received no-shipment certifications from the aforementioned companies between December 16, 2009, and December 28, 2009.

The Department also issued a no-shipments inquiry to CBP, asking it to provide any information contrary to our CBP run showing zero entries of subject merchandise for merchandise manufactured and shipped by the aforementioned companies. We did not receive any response from CBP indicating whether there were any entries of subject merchandise into the United States during the POR which were exported by these companies. Consequently, we preliminary determine that none of the above-named companies had shipments of subject merchandise to the United States during the POR, and we are preliminarily rescinding the review with respect to the above-named companies.[6]

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule ("HTSUS") subheadings 7326.20.0020 and 7323.99.9060.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Affiliation/Single Entity

Based on the evidence presented in the Shanghai Wells' questionnaire responses, we preliminarily find that Shanghai Wells, Hong Kong Wells Limited ("HK Wells"), and Hong Kong Wells Limited (USA) are affiliated, pursuant to sections 771(33)(A), (E), and (F) of the Act. In addition, based on the evidence presented in its questionnaire responses, we preliminarily find that Shanghai Wells and HK Wells should be treated as a single entity for the purposes of this administrative review. This finding is based on our determination that HK Wells is involved in the export of subject merchandise produced by Shanghai Wells and that a significant potential for manipulation of price or production exists between these two entities.[7] *See* 19 CFR 351.401(f)(1) and (2). For further discussion of the Department's affiliation and single-entity decisions, *see* "Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Irene Gorelik, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Results in the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Affiliation/Single Entity Memorandum for Shanghai Wells Hanger Co., Ltd.," dated concurrently with this notice. Consequently, we have calculated a single antidumping duty rate for the single entity comprised of Shanghai Wells and HK Wells, hereinafter referred to as the Wells Group.

Surrogate Country and Surrogate Value Data

On March 25, 2010, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing factors of production ("FOPs"). On May 21, 2010, Petitioner filed

deadline is the next business day. *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).

[4] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

[5] *See* "Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Josh Startup, Analyst; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Respondents for Individual Review," dated February 12, 2010.

[6] *See, e.g., Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part,* 75 FR 11855 (March 12, 2010), unchanged in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010).

[7] While HK Wells is not a producer of hangers, we note that where companies are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has found it appropriate to treat those companies as a single entity. The Court of International Trade upheld the Department's decision to include export decisions in its analysis of whether there was a significant potential for manipulation. *See Hontex Enterprises* v. *United States,* 248 F. Supp. 2d 1323, 1343 (CIT 2003). In this case, not only is HK Wells an exporter of subject merchandise, but it is an exporter of the subject merchandise produced by its affiliate, Shanghai Wells.

comments on surrogate country selection, stating India, the Philippines, Indonesia and Thailand may be appropriate surrogates if there were publicly available, reliable and contemporaneous data for them, and Shaoxing Dingli filed comments recommending the Department select India as a surrogate country. On June 1, 2010, the Department received information to value FOPs from Shaoxing Dingli and Petitioner. On June 1, 2010, the Department also received surrogate value ("SV") information from Fabricare Choice Distributors Group, an interested party. On June 11, 2010, Petitioner and Shaoxing Dingli filed rebuttal comments with respect to SVs. On June 21, 2010, Petitioner and Shaoxing Dingli provided additional factual information concerning SV information. On July 1, 2010, Shaoxing Dingli filed rebuttal comments to Petitioner's factual information concerning SV information. Both Petitioner and Shaoxing Dingli provided SVs from sources in India, while Petitioner also provided SVs from Thailand.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. Regarding the "level of economic development," the Department places primary emphasis on per capita gross national income ("GNI") as the measure of economic comparability.[8] Using per capita GNI, the Department determined that India, Indonesia, Philippines, Peru, Ukraine and Thailand are countries comparable to the PRC in terms of economic development.[9] Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable. Regarding the "significant producer" prong of section 773(c)(4)(B) of the Act, the Department identified all countries that had exports of comparable merchandise (defined as exports under HTS 7326.20, 7323.99, the HTS numbers identified in the scope of the order) between 2007 and 2009, and deemed such countries to be significant producers. In this case, we have defined a "significant producer" as a country that has exported comparable merchandise in between 2007 and 2009.

The Department has determined that India is the appropriate surrogate country for use in this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. Although Petitioner provided SV data for both Thailand and India, India's data is the best available data on the record for selection as the primary surrogate. Therefore, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondent's FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible.

Non-Market Economy Country Status

In every proceeding conducted by the Department involving the PRC, we have treated it as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME shall remain in effect until revoked by the Department. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

To obtain separate rate status, the Department requires exporters and producers to submit a separate rate status certification and/or application. *See Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* 70 FR 17233 (April 5, 2005) ("*Policy Bulletin 05.1*"), also available at: *http://ia.ita.doc.gov/policy/index.html.* However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed.

As noted above, a designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(c)(i) of the Act. In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See Policy Bulletin 05.1; see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

It is the Department's policy to assign all NME exporters of merchandise subject to an administrative review this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. *See Policy Bulletin 05.1.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME") country, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

Excluding the companies selected for individual review, the Department received separate rate applications or certifications from the following 15

[8] 19 CFR 351.408(b).

[9] The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. *See* the Department's letter to "All Interested Parties; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated March 25, 2010 at 1 and Attachment I.

companies: (1) Shaoxing Gangyuan Metal Manufactured Co. Ltd.; (2) Shaoxing Tongzhou Metal Manufactured Co. Ltd.; (3) Shaoxing Andrew Metal Manufactured Co., Ltd.; (4) Shaoxing Shunji Metal Clotheshorse Co., Ltd.; (5) Yiwu Ao-Si Metal Products Co., Ltd.; (6) Shangyu Baoxiang Metal Manufactured Co., Ltd.; (7) Jiaxing Boyi Medical Device Co., Ltd.;[10] (8) Pu Jiang County Command Metal Products Co., Ltd.; (9) Shaoxing Meideli Metal Hanger Co., Ltd.; (10) Shaoxing Zhongbao Metal Manufactured Co., Ltd.; (11) Zhejiang Lucky Cloud Hanger Co., Ltd.; (12) Ningbo Dasheng Hanger Ind. Co., Ltd.; (13) Shaoxing Guochao Metallic Products Co., Ltd.; (14) Shanghai Jianhai International Trade Co., Ltd.; and (15) Shaoxing Liangbao Metal Manufactured Co., Ltd.

A. Separate Rate Recipients

1. Wholly Foreign-Owned

Shanghai Wells reported that it is a wholly foreign-owned entity.[11] Additionally, there is no evidence that the Wells Group is under the control of the PRC government, and we have determined that further separate rate analysis is not necessary to determine whether this entity is independent from government control.[12] Thus, we have preliminarily granted separate rate status to the Wells Group.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Shaoxing Dingli [13] and the 15 separate rate applicants in this administrative review stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. The Department has analyzed whether Shaoxing Dingli and the 15 separate rate applicants have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. The evidence provided by Shaoxing Dingli and the 15 separate rate applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[14]

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Shaoxing Dingli and the 15 separate rate applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.[15] Therefore, the Department preliminarily finds that Shaoxing Dingli and the 15 separate rate applicants have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

B. Companies Located Outside the PRC

Based on the public certificate of service in Petitioner's request for administrative review, dated November 2, 2009, the record indicates that 70 of the 187 companies upon which the Department initiated this administrative review are located outside of the PRC.[16]

[10] The Department inadvertently misspelled Jiaxing Boyi Medical Device Co., Ltd.'s name in the *Initiation Notice* as "Jianxing Boyi Medical Device Co., Ltd." The name has been corrected for these preliminary results.

[11] *See* Shanghai Wells' Section A Questionnaire Response, dated March 12, 2010, at 2.

[12] *See, e.g, Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[13] *See* Shaoxing Dingli's Section A Questionnaire Response, dated March 8, 2010, at 2.

[14] *See, e.g.,* Shaoxing Dingli's Section A Questionnaire Response dated March 8, 2010, at 2–4; Shaoxing Shunji Metal Clotheshorse Co., Ltd.'s Separate Rate Certification dated December 28, 2009, at 4; Shaoxing Meideli Metal Hanger Co., Ltd.'s Separate Rate Certification dated December 28, 2009, at 4–5.

[15] *See, e.g.,* Shaoxing Dingli's Section A Questionnaire Response dated September 5, 2008, at 5–9; Shaoxing Guochao Metallic Products Co., Ltd.'s Separate Rate Certification dated December 28, 2009, at 5; Shaoxing Andrew Metal Manufactured Co., Ltd.'s Separate Rate Certification dated December 28, 2009, at 7.

[16] *See* Petitioner's November 2, 2009, review request. These 70 companies are: Ahlers Vina Logistics; Alpi Trading Service Co., Ltd.; Amerasian Shipping Logistics Corp.; Anc Service Co., Ltd.; Angang Clothes Rack Manufacture Co.; Apex Holding Group Limited.; Arturo Huizar Velazquez; Biz Sources Inc. (Biz Sources PTY Ltd.); Canada Cleaning Supply Corp.; Centurion Logistics Services Ltd.; Cohesion Freight (HK) Ltd.; Cong Ty Duoc Thao; Cong Ty Trach Nhiem (CTN Co., Ltd.); Diep Son Hangers One Member Co., Ltd.; Dma Logistics Inc.; Dong Nam A Co., Ltd.; Evergreen Logistics Vietnam Co., Ltd.; Far Go Express Company Limited; Focus Shipping Corp.; For You Beautiful Industrial Co., Ltd.; General Merchandise Consolidators, Inc.; Giant Choice Co., Ltd.; Gle Logistics Co., Ltd.; Globe Express Services S.a.r.L. Co., Ltd.; Good Wonder Limited; Hcmc General Import and Export Investment Joint Stock Company (IMexico); Hippo Logistics Co., Ltd.; Honour Lane Logistics Co., Ltd.; Honour Lane Shipping Limited; Intercontinental Shipping Co., Ltd.; Ju Fu Co., Ltd.; KB Steel; Kingly Industry (Canada) Corp.; Korea Laundry Industry Co., Ltd.; Kyung Dong Industrial Co., Ltd.; Limpiaduria Zaragoza Huizar; Maple Hangers Inc.; Mico Mit Co., Ltd.; Moc Viet Manufacture Co., Ltd.; Multi–Sander Tech. Co., Ltd.; N2j Co., Ltd.; NV Hanger Co., Ltd.; Oec Freight Worldwide Co., Ltd.; Orient Star Shipping Pte.; Oriental Dragon Co., Ltd.; Oriental Logistics Group Ltd.; P T Transportation Ltd.; Pacific Star Express Corporation; Price Group Ltd.; Prolim De Baja California; Quyky–yanglei International Co., Ltd.; Rising Trade Inc.; Royal Cargo Combined Logistics, Inc.; Royal McGoun Inc.; Seamaster Logistics Inc.; Sirius Global Logistics Co., Ltd.; Smart Concept Trading Limited; Star Glory Ltd.; Summit Logistics International Inc.; Sun Vn Transport Corp. (Sunvn Transport Corporation); Tay Ruey Enterprise Co.; Thanh Hieu Manufacturing Trading Co., Ltd.; Top Harvest Metal Co. Ltd.; Topocean Vietnam; Transworld Transportation Co., Ltd.; Twt–Transworld Transportation Co., Ltd.; Unitex International Forwarding (HK) Ltd., Vantage Logistics Corporation; Viet Anh Import–Export Joint Stock Company; Vietnam Hangers Joint Stock Company; Wiexin Cargo Services Co., Ltd.; Whale Logistics Company Ltd.; Winwell Industrial

Continued

None of these companies have requested that the Department assign to them their own rate or certified that they had no shipments of subject merchandise during the POR. Because the 70 companies did not request the Department to assign to them their own rate, any exports of subject merchandise by these non-PRC exporters will be subject to the cash deposit rate of the PRC exporters that supplied them.

C. PRC-Wide Entity

As stated above in the "Background" section, the Department initiated an administrative review with respect to 187 companies. The Department provided companies not selected for individual examination the opportunity to file either a separate rate application or certification, which was made available on the Department's website. *See Initiation Notice,* 74 FR at 61658–9. Out of the 187 companies, excluding the two mandatory respondents, 15 filed either separate rate certifications or separate rate applications. Of the remaining companies, five reported having made no shipments to the United States during the POR and 70 companies appear to be located outside of the PRC, thus an analysis of whether these companies have rebutted the presumption of PRC government control is moot.

However, 94 companies upon which we initiated a review, and which are located within the PRC, did not: (1) Apply for separate rate status; or (2) notify the Department that they had no shipments of subject merchandise during the POR.[17] These 94 companies listed in the *Initiation Notice* have not demonstrated their eligibility for separate rate status in this administrative review. Therefore, the Department preliminarily determines that because there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status, we are treating these companies as part of the PRC-wide entity, and subject to the PRC-wide entity rate of 187.25 percent.

Separate Rate Calculation

The statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in an administrative review. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, as guidance when we establish the rate for respondents not examined individually in an administrative review.[18] Section 735(c)(5)(A) of the Act provides that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated * * *"

Because using the weighted-average margin based on the calculated net U.S. sales values for the Wells Group and Shaoxing Dingli would allow these two respondents to deduce each other's business-proprietary information and thus cause an unwarranted release of such information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.

For these preliminary results, we determine that using the ranged total U.S. sales values the Wells Group and Shaoxing Dingli reported in the public versions of their responses (dated April 12, 2010, and October 13, 2010, respectively) to our request for information concerning the quantity and value of their exports to the United States is more appropriate than applying a simple average. These publicly available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of the Wells Group and Shaoxing Dingli. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.

Because the calculated net U.S. sales values for the Wells Group and Shaoxing Dingli are business-proprietary figures, we find that 6.58 percent, which we calculated using the publicly available figures of U.S. sales values for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated net U.S. sales values of the Wells Group and Shaoxing Dingli. *See* "Memorandum to the File from Joshua Startup, Analyst, through Catherine Bertrand, Program Manager, Office 9; First Administrative Review of Steel Wire Garment Hangers from the PRC: Calculation of the Separate Rate," dated concurrently with this notice.

Date of Sale

Both the Wells Group and Shaoxing Dingli reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. The Department preliminarily determines that the

Limited; Zownzi Hardware Hanger Fty Ltd.; and Zynpak Packaging Products Inc.

[17] These 94 companies are: Acrowell International Logistics; Acx Logistics (China) Ltd.; Agility Logistics (Shanghai) Ltd.; Alcon Express Corp.; Anhui Whywin International Co., Ltd.; Apex Maritime Co. Ltd.; Apl Logistics China, Ltd.; Ate Logistics Co., Ltd.; Beijing Kang Jie Kong Cargo Agent Co., Ltd.; Brilliant Globe Logistics Inc.; China Coast Freight Co., Ltd.; China Container Line (Shanghai) Ltd.; China International Freight Co., Ltd.; China Ocean Shipping Agency (Ningbo); City Ocean Logistics Co., Ltd.; Cixi K&J International Co., Ltd.; Cohesion Freight Agency Ltd. (Shanghai); De Well Container Shipping Corp.; Direct Service Inc.; Distribution Rsjo Inc.; Dragon Trading Shipping Co., Ltd.; Dynamic Network Container Line Ltd.; Expeditors China; Fastic Transportation Co., Ltd.; Fortune Freight International Co., Ltd.; Ge Li Commerce Co., Ltd.; Goldever International Logistics Co.; Guangdong Provincial Taoyue Mfg. Co., Ltd.; Guangxi Shengfeng Import and Export Co., Ltd.; Guangzhou Yanglei–Packing Co., Ltd.; Guilin Yc Enterprise Co., Ltd.; Hangzhou Rico Homeware and Apparel Ltd.; Hanhen Shipping (China) Co., Ltd.; Hanjin (Shenzhen) Co., Ltd.; Hanjin Logistics (Shanghai) Co., Ltd.; Hecny Shipping Limited; Huada Fashion Enterprise, Inc.; Huguang Huojia Factory; Jiangmen Hongjun Hardware & Elect.; Jiangsu Globe Logistics Limited Co.; Jiangyin Hongji Metal Products Co., Ltd.; Jr Metal Products Shanghai; Kaiping Youming Hardware & Plastic Products Co., Ltd.; Kuehne & Nagel Ltd.; Laidlaw Company LLC; Laidlaw Metal Products Co., Ltd.; Laidlaw Shanghai; Lights Out Machinery Co., Ltd.; Link & Link Shipping Ltd.; Nanchang Tuhai Industry Co., Ltd.; Ningbo Eidz Holding Ltd.; Ningbo Jude Trading Co., Ltd.; Ningbo Peacebird Import & Export Co., Ltd.; Ningbo Yifan International Forwarding Agency Co., Ltd.; Ocean Star International Logistics Co., Ltd.; Odyssey International (China) Ltd.; Orient Express Container Co., Ltd.; Orient Star Transport International Ltd.; Pacific Star International Logistics (China) Co., Ltd.; Phoenix International Freight Services Ltd.; Pingye Foreign Transportation Co., Ltd.; Post–Pop Art Co., Ltd.; Pudong Trans USA, Inc.; RDD Freight International Inc.; Rich Shipping Company Limited; Schenker China Ltd.; Sea Bright International Industrial; Shanghai Air Sea Transport Inc.; Shanghai Channel International Logistics; Shanghai Fanyuan Freight Forwarding; Shanghai Garment Group Import/Export Corp.; Shanghai Light Industry and Textile Group Co., Ltd.; Shanghai T.H.I Transport Co., Ltd.; Shaoguang International Trade Co.; Shaoxing Leiluo Metal Manufactured; Shenzhen Center Link International; Shenzhen Pacific–Net Logistics Inc.; Shipping & Distribution Ltd.; Sino Connections Logistics Inc.; Sinobo International Logistics Co., Ltd.; Sinotrans Zhejiang Co., Ltd.; The Houjie Town Yongxiang/Hardware Processing Plant; Tianjin Hongtong Metal Manufacture Co., Ltd.; Top Shipping Logistics Co., Ltd.; Topocean Consolidation Service (China) Ltd.; Translink Shipping Inc.; U.S. United Logistics Inc.; Unique Logistics International (HK) Ltd.; Ups Scs Ltd.; Wuhu Rising International Trade Co., Ltd.; Xin Chang Heng Xin Yi Jia Factory; Zhejiang Hailiang Co., Ltd.; Zhejiang King Merchandise Industrial; and Zhejiang Peace Industry and Trade Inc.

[18] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460 (August 13, 2010); *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review,* 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

invoice date is the most appropriate date to use as the Wells Group and Shaoxing Dingli date of sale in accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale.[19]

Fair Value Comparisons

To determine whether sales of hangers to the United States by the Wells Group and Shaoxing Dingli were made at less than NV, the Department compared either export price ("EP") or constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated EP for a portion of sales to the United States for the Wells Group and Shaoxing Dingli because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling ("B&H"). Each of these services was either provided by a NME vendor or paid for using a NME currency. Thus, the Department based the deduction of these movement charges on surrogate values. *See* "Memorandum to the File from Josh Startup, Analyst, through Catherine Bertrand, Program Manager; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results," dated November 8, 2010 ("*Prelim Surrogate Value Memo*") for details regarding the surrogate values for movement expenses. For international freight provided by a ME provider and paid in U.S. dollars, the Department used the actual cost per kilogram ("kg") of the freight.

Constructed Export Price

For some of the Wells Group's and Shaoxing Dingli's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Chinese-based companies by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service providers or paid for in renminbi, the Department valued these services using SVs (*see* "Factor Valuations" section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* the company specific analysis memoranda, dated November 8, 2010.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Further, pursuant to section 773(c)(1) of the Act, the valuation of an NME respondent's FOPs shall be based on the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the Department. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

The Department used Indian import statistics to value the raw material and packing material inputs that the Wells Group and Shaoxing Dingli used to produce the merchandise under investigation during the POR, except where listed below. In past cases, it has been the Department's practice to calculate an SV for various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas ("WTA"), as published by Global Trade Information Services ("GTIS").[20] However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian rupee to the U.S. dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the official reporting currency for Indian data from the Indian rupee to the U.S. dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian rupee to the U.S. dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.[21]

However, the data reported in the GTA software report import statistics, such as data from India, in the original reporting currency and thus these data correspond to the original currency value reported by each country. Additionally, the data reported in GTA software are reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

With respect to the SVs based on Indian import statistics, the Department

[19] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

[20] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009), unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 74 FR 65520 (December 10, 2009).

[21] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

has disregarded prices that the Department has reason to believe or suspect may be subsidized. In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[22] The Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific, export subsidies.[23] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it has reason to believe or suspect that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies and that we should therefore disregard any data from these countries contained in the Indian import statistics used to calculate SVs. Additionally, the Department disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[24] For further discussion regarding all SV calculations using Indian import statistics derived from the GTA data, *see* Prelim Surrogate Value Memo.

[22] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[23] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

[24] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008) ("*PET Film*").

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the Wells Group and Shaoxing Dingli, the Department calculated NV based on the FOPs reported by the Wells Group and Shaoxing Dingli for the POR. The Department used data from GTA and other publicly available Indian sources in order to calculate SVs for the Wells Group and Shaoxing Dingli FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Indian SVs (except as noted below). Because the statute is silent concerning what constitutes the "best available information" for a particular SV, the courts have recognized that the Department enjoys "broad discretion to determine the best available information for an antidumping review." *See Ad Hoc Shrimp Trade Action Comm.* v. *United States,* 2010 U.S. App. LEXIS 18745 (Fed. Cir. 2010). The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to the Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all SVs used for the Wells Group and Shaoxing Dingli, *see* Prelim Surrogate Value Memo.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value FOPs, consistent with our practice, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim Surrogate Value Memo at Exhibit 2. *See also PET Film.* Where necessary, the Department adjusted SVs for inflation, exchange rates, and taxes, and the Department converted all applicable items to a per kg basis.

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Prelim Surrogate Value Memo.

The Department valued water using publicly available data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) because these data include a wide range of industrial water tariffs. This source provides industrial water rates within the Maharashtra province for "inside industrial areas" and "outside industrial areas" from April 2009 through June 2009. Because the average of these values is contemporaneous with the POR, we did not adjust it for inflation. *See* Prelim Surrogate Value Memo.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing the respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor

Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Prelim Surrogate Value Memo. The Department calculated a simple average industry-specific wage rate of $1.39 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 28 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 (Manufacture of Fabricated Metal Products, Except Machinery and Equipment) to be the best available wage rate SV on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and are significant producers of comparable merchandise: Ecuador, the Arab Republic of Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, *see* Prelim Surrogate Values Memo.

The Department valued truck freight expenses using an Indian per-unit average rate calculated from publicly available data on the following web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR. *See* Prelim Surrogate Value Memo.

To value B&H, the Department used a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is publicly available and compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India* (published by the World Bank). *See* Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the 2008–2009 audited financial statements of Lakshmi Precision Screws Ltd. ("Lakshmi") and Nasco Steels Private Limited ("Nasco"), both of which are Indian screw/nail and fastener manufacturers.[25] Among all the other financial statements placed on the record of this review, we find that Lakshmi's and Nasco's financial statements are the most appropriate for these preliminary results because they are both producers of downstream products made of steel wire rod. Furthermore, the Department finds that both financial statements are appropriate sources given that no usable financial statements are available for producers of identical merchandise. Finally, Lakshmi's and Nasco's 2008–2009 financial statements fulfill the broadest range of the criteria examined by the Department when selecting appropriate financial statements with which to value SG&A expenses, such as contemporaneity, specificity, and quality of data.[26] For a detailed discussion regarding our selection of Lakshmi's and Nasco's 2008–2009 financial statements to calculate the surrogate financial ratios, *see* Prelim Surrogate Value Memo.

Company Specific Issues

Shaoxing Dingli

For these preliminary results, the Department is not granting Shaoxing Dingli a by-product offset for "Scrap Iron Buckets" because they are not generated from the subject merchandise production process. This is consistent with the Department's practice of not granting offsets to by-products which are not generated in the production process.[27]

Shaoxing Dingli reported a warranty expense for damaged or defective merchandise, and reported its sales quantity net of these returns in its Section C database. Shaoxing Dingli credited its customers for the damaged merchandise, and allocated the cost out over all of its sales. Consistent with the Department's practice, for these preliminary results, we are allowing the warranty expenses to be allocated over all of Shaoxing Dingli's CEP sales.[28]

Petitioner submitted comments alleging that Shaoxing Dingli may have not reported the universe of subject merchandise sales to the United States during the POR, following the indictment of an importer of subject merchandise on a duty evasion charge.[29] The Department has taken note of this issue, but for these preliminary results is not including the sales alleged by Petitioner as unreported, because Shaoxing Dingli produced documentation showing that a bonded truck was contracted to transport all of the merchandise in question to Mexico and there is no CBP documentation that any of the alleged unreported sales entered the United States for consumption.[30]

The Wells Group

In its questionnaire responses and sales databases, the Wells Group reported certain expenses incurred, and corresponding revenues earned, related to the transportation or movement of the subject merchandise sales during the POR. Our practice with respect to revenue earned, such as freight revenue, from sales is to add the revenue to the gross unit price.[31] Here, to account for post-sale adjustments of various reported transportation-related revenues as an addition to the gross unit price and the corresponding transportation-expenses incurred as a deduction included in the international and U.S. movement charges, we deducted the transportation-related revenues from the corresponding transportation-related expenses, where applicable, resulting only in a deduction of the actual transportation-related expense incurred, which inherently accounts for the Wells Group's transportation-related revenues earned by reducing the associated expenses. This is consistent with our

[25] Lakshmi's 2008–2009 audited financial statements were submitted by Petitioner on June 1, 2010.

[26] *See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 72 FR 44827 (August 9, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

[27] *See, e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

[28] *See, e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comments 59 and 69 (where we stated that "consistent with the Department's practice, we have utilized all expenses incurred during the {period of investigation} and allocated such across all {period of investigation} sales using a value-based allocation methodology").

[29] *See* Petitioner's comments dated August 27, 2010.

[30] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews,* 74 FR 29473 (June 22, 2009), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

[31] *See, e.g., Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 51781 (September 11, 2007), unchanged in *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 14437 (March 18, 2008).

treatment of the Wells Group's transportation-related revenues in the underlying investigation.[32]

However, with respect to U.S. antidumping duty revenue reported by the Wells Group, the Department excluded this "revenue" item as an addition to gross unit price, because the increased "revenue" of the Wells Group's U.S. sales during the POR to cover antidumping duties are already accounted for in the reported gross unit price, as confirmed by the Wells Group itself.[33] For a full discussion of the adjustments to the gross unit price, *see* "Memorandum to the File from Irene Gorelik, Senior Analyst: Program Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Shanghai Wells Hanger Co., Ltd.," dated November 8, 2010.

Currency Conversion

The Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

STEEL WIRE GARMENT HANGERS FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/exporter	Weighted average margin (percent)
Shanghai Wells Hanger Co., Ltd. and/or Hong Kong Wells Limited	1.10
Shaoxing Dingli Metal Clotheshorse Co., Ltd.	12.25
Shaoxing Metal Companies[34]	6.58
Shaoxing Shunji Metal Clotheshorse Co. Ltd.	6.58
Yiwu Ao-Si Metal Products Co., Ltd.	6.58
Shangyu Baoxiang Metal Manufactured Co., Ltd.	6.58
Jiaxing Boyi Medical Device Co., Ltd.	6.58
Pu Jiang County Command Metal Products Co. Ltd.	6.58
Shaoxing Meideli Metal Hanger Co., Ltd.	6.58
Shaoxing Zhongbao Metal Manufactured Co., Ltd.	6.58
Zhejiang Lucky Cloud Hanger Co., Ltd.	6.58
Ningbo Dasheng Hanger Ind. Co., Ltd.	6.58
Shaoxing Guochao Metallic Products Co. Ltd.	6.58
Shanghai Jianhai International Trade Co., Ltd.	6.58
Shaoxing Liangbao Metal Manufactured Co., Ltd.	6.58
PRC-Wide Entity[35]	187.25

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Because the Department intends to seek additional information, the Department will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c) and (d).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the weight-average of the publicly-ranged values reported by the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

[32] *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 9A ("*Hangers LTFV*").

[33] *See* Shanghai Wells' Supplemental Section C Questionnaire Response dated May 13, 2010 at 13, where Shanghai Wells stated that it reported "in the field REVDOCT the revenue of antidumping duty that is being part of the invoiced price that Shanghai Wells charged its customers."

[34] In the this administrative review, Shaoxing Gangyuan Metal Manufactured Co. Ltd., Shaoxing Tongzhou Metal Manufactured Co. Ltd., and Shaoxing Andrew Metal Manufactured Co., Ltd. all reported in their respective separate rate certifications that their affiliations, legal structure, and ownership structure have not changed since the underlying investigation. Thus, we continue to find that these three companies comprise a single entity, as determined in the underlying investigation, where we found that Shaoxing Gangyuan Metal Manufactured Co. Ltd., Shaoxing Tongzhou Metal Manufactured Co. Ltd., and Shaoxing Andrew Metal Manufactured Co., Ltd. were a single entity pursuant to 19 CFR 351.401(f)(1) and (2). *See Hangers LTFV,* 73 FR at 47589.

[35] The PRC-Wide entity includes the 94 companies listed in footnote 16 of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 187.25 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 3, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–28287 Filed 11–8–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–915]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 9, 2010.

FOR FURTHER INFORMATION CONTACT: Austin Redington or Patricia Tran, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1664 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2010, the U.S. Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the countervailing duty order on light-walled rectangular pipe and tube from the People's Republic of China ("PRC") for the period of review January 1, 2009, through December 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 45094 (August 2, 2010). On August 30, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from Sun Group Co., Ltd. ("Sun Group") to conduct an administrative review of Sun Group. No other party requested an administrative review.

On September 29, 2010, the Department published the notice of initiation of this countervailing duty administrative review with respect to Sun Group. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076, 60082 (September 29, 2010).

Rescission of Countervailing Duty Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested administrative review. On October 15, 2010, Sun Group timely withdrew its request for an administrative review, and no other party requested a review. Therefore, in response to Sun Group's withdrawal of its request for review, and pursuant to 19 CFR 351.213(d)(1), the Department hereby rescinds this administrative review.

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties on all appropriate entries. For the Sun Group, countervailing duties shall be assessed at rates equal to the cash deposit or bonding rate of the estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 1, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–28283 Filed 11–8–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ23

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations

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

ACTION: Notice; request for comments.

SUMMARY: NMFS proposes to issue a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals from six marine mammal stocks listed under the Endangered Species Act (ESA) by groundfish fisheries in the Bering Sea and the Gulf of Alaska. In accordance with the Marine Mammal Protection Act (MMPA), NMFS has made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on the endangered Central North Pacific (CNP) stock of humpback whales, Western North Pacific (WNP) stock of humpback whales, Northeast Pacific (NEP) stock of fin whales, North Pacific stock of sperm whales, and Western U.S. stock of Steller sea lions; and on the threatened Eastern U.S. stock of Steller sea lions. NMFS has insufficient funds to complete TRPs for the two stocks of humpback whales, for the North Pacific stock of sperm whales, and for the Western U.S. stock of Steller sea lions. Take Reduction Plans (TRPs) are not required for the NEP stock of fin whales or the Eastern U.S. stock of Steller sea lions because mortality and serious injury of these stocks incidental to commercial fishing operations are at insignificant levels approaching a zero mortality and serious injury rate. Recovery plans are being prepared or have been completed for these threatened or endangered species. A monitoring plan is in place, and vessels have been registered under the MMPA for the fisheries included in this proposed permit. Accordingly, NMFS proposes to issue the required permits to participants in the Alaska-based groundfish fisheries. NMFS solicits public comments on the negligible impact determination and on the proposal to issue this permit.

DATES: Comments must be received by November 24, 2010.

ADDRESSES: A draft Negligible Impact Determination (NID) for five of the affected stocks is available on the Internet at the following address: *http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp.* The final NID for the sixth stock, CNP humpback whales, is available on the Internet at the following address: *http://www.fpir.noaa.gov/PRD/prd_humpback.html.* Recovery plans for these species are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals.*

Address all comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by e-mail to *mmpapermitAK@noaa.gov.* Include in the subject line the following document identifier: 0648–XZ23 permit. E-mail comments with or without attachments are limited to 5 megabytes. Written comments should be sent to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802. Comments may be hand-delivered to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK; or may be faxed to (907) 586–7557.

All comments received are a part of the public record. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. Comments received after the 15-day comment period may not be considered or made part of the record.

FOR FURTHER INFORMATION CONTACT: Dana J. Seagars, Protected Resources Division AKR, (907) 271–5005, or Tom Eagle, Office of Protected Resources, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION: NMFS is now considering the issuance of a 3-year permit under MMPA section 101(a)(5)(E) (16 U.S.C. 1371(a)(5)(E)) to participants registered in certain Alaska-based groundfish fisheries to incidentally take individuals from five marine mammal stocks listed as endangered under the ESA: The CNP stock of humpback whales, the WNP stock of humpback whales, the NEP stock of fin whales, the North Pacific stock of sperm whales, and the Western U.S. stock of Steller sea lions, and from one stock, the Eastern U.S. stock of Steller sea lions, listed as threatened.

Taking of individuals from these threatened or endangered stocks of marine mammals would be authorized incidental to operation of the following Federal and State-parallel Category II groundfish fisheries: the AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries. Because other stocks of threatened or endangered marine mammals are not taken incidental to groundfish fisheries in Alaska, no other species or stocks are considered for this proposed permit. There are no Category I fisheries designated in Alaska. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report injuries or mortalities of marine mammals incidental to their operations for the taking to be authorized after a NID has been made. NMFS will consider issuing permits at a future date for the taking of the subject threatened or endangered species by participants in State-managed fisheries other than the State-parallel groundfish fisheries. State-parallel groundfish fisheries are included in this proposed permit. The data for considering these authorizations were reviewed coincident with the preparation of the proposed 2011 MMPA List of Fisheries (LOF) (75 FR 36318, June 25, 2010), the draft 2010 marine mammal stock assessment reports (dSAR) (Allen and Angliss 2010), and other relevant sources.

MMPA section 101(a)(5)(E) requires NMFS to authorize the incidental taking of individuals from marine mammal species or stocks listed as threatened or endangered under the ESA in the course of commercial fishing operations, if NMFS determines that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with MMPA section 118, and a TRP has been developed or is being developed for such species or stock.

Determining Negligible Impact in Fisheries

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if that mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a NID. NMFS clarifies that incidental mortality and serious injury include only direct mortality and serious injury, such as from entanglement or hooked in fishing gear. Indirect effects, such as the effects of removing prey from habitat, are not included in this analysis. An opinion prepared under ESA section 7 considers direct and indirect effects of Federal actions and, thus, contains a broader scope of analysis than is required by MMPA section 101(a)(5)(E).

Although the MMPA does not define "negligible impact", NMFS has issued regulations providing a qualitative definition of negligible impact (50 CFR 216.3) and, through scientific analysis,

peer review, and public notice, developed a quantified approach and a process to make such determinations. The development of the approach and process was outlined in detail in the current draft NID made available through this notice and was included in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (*e.g.,* proposed for CNP humpback whales in 75 FR 8305, February 24, 2010 and final in 75 FR 29984, May 28, 2010).

NMFS has adopted the following criteria for making a negligible impact determination relevant to incidental take permits (64 FR 28800, May 27, 1999):

(1) The threshold for initial determination will remain at 10 percent of the Potential Biological Removal level (PBR). If total human-related serious injuries and mortalities are less than 10 percent of PBR, all fisheries may be permitted.

(2) If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 10 percent of PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality are less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total.

(3) If total fisheries-related serious injuries and mortalities are greater than 10 percent of PBR and less than PBR and the population is stable or increasing, fisheries may be permitted subject to individual review and certainty of data. Although the PBR level has been set up as a conservative standard that will allow recovery of a stock, there are reasons for individually reviewing fisheries if serious injuries and mortalities are above the threshold level. First, increases in permitted serious injuries and mortalities should be carefully considered. Second, as serious injuries and mortalities approach the PBR level, uncertainties in elements such as population size, reproductive rates, and fisheries-related mortalities become more important.

(4) If the population abundance of a stock is declining, the threshold level of 10 percent of PBR will continue to be used. If a population is declining despite limitations on human-related serious injuries and mortalities below the PBR level, a more conservative criterion is warranted.

(5) If total fisheries-related serious injuries and mortalities are greater than PBR, permits may not be issued.

The NID Criterion (1) is the starting point for analyses. If this criterion is satisfied, the analysis would be concluded. The remaining criteria describe alternatives under certain conditions, such as fishery mortality below the negligible threshold but other human-caused mortality above the threshold, or fishery and other human-caused mortality between the negligible threshold and PBR for a stock that is increasing or stable. If NID Criterion (1) is not satisfied, NMFS may use one of the other criteria, as appropriate.

Description of the Fisheries

The following are the Federally-authorized and State-parallel groundfish fisheries classified as Category II in the 2010 LOF which are known to seriously injure or kill ESA-listed marine mammals incidental to commercial fishing operations. Detailed descriptions of these fisheries can be found in the June 2004 Alaska Groundfish Fisheries Final Supplemental Programmatic Environmental Impact Statement (*http://alaskafisheries.noaa.gov/sustainablefisheries/seis/*) and in NMFS (2010), a draft Biological Opinion (BiOp) on the groundfish fishery management plan the fisheries addressed in the draft BiOp henceforth are collectively referred to as the "Alaska groundfish fisheries." Certain aspects of the fisheries may be altered due to reasonable and prudent alternatives included in the BiOP; however, these changes in fishing operations are not expected to result in increased levels of mortality and serious injury of marine mammals, including threatened and endangered species.

Bering Sea/Aleutian Islands Flatfish Trawl

In 2008 the Amendment 80 program allocated most of the Bering Sea and Aleutian Islands (BSAI) rock sole, flathead sole, and yellowfin sole allocations to the trawl catcher processor sectors using bottom trawl gear. Other vessel categories and gear types catch some rock sole, flathead sole, and other flatfish incidentally in other directed fisheries. In 2009, 30 vessels targeted flatfish in the BSAI. Rock sole is generally targeted during the roe season. Then these vessels shift to several different targets, notably Atka mackerel, arrowtooth flounder, flathead sole, yellowfin sole, Pacific cod, and Pacific ocean perch. Vessels also can go into the Gulf of Alaska to fish for arrowtooth, Pacific cod, flathead sole, and rex sole. In the BSAI, most of the rock sole, flathead sole, and other flatfish fisheries occur on the continental shelf in the eastern Bering Sea in water shallower than 200 m. Some effort follows the contour of the shelf to the northwest and extends as far north as Zhemchug Canyon. Very few rock sole, flathead sole, and other flatfish are taken in the Aleutian Islands due to the limited shallow water areas present.

Bering Sea/Aleutian Islands Pollock Trawl

In 2009, 117 vessels targeted pollock in the BSAI management area. The pattern of the modern pollock fishery in the BSAI is to focus on a winter, spawning-aggregation fishery. The A season fishery is January 20 through June 10. Fishing in this season lasts about 8–10 weeks depending on the catch rates. The B season is June 10 through November 1. Fishing in the B season is typically September through October and has been conducted to a greater extent west of 170° west long. compared to the A season fishing location in the southern Bering Sea. Directed fishing is closed for pollock in all areas from November 1 to January 20. Fishing is also closed around designated rookeries and haulouts out to 20 nm and within Steller sea lion foraging areas in the BSAI. The Bering Sea pollock total allowable catch (TAC) is allocated 40 percent to the A season and 60 percent to the B season. No more than 28 percent of the annual directed fishing allowance for pollock can be taken inside the Sea Lion Conservation Area in the southern Bering Sea before April 1.

Bering Sea/Aleutian Islands Pacific Cod Longline

In 2009, 55 vessels targeted Pacific cod using hook-and-line gear. Hook-and-line harvested Pacific cod are mostly taken along the slope of the continental shelf break and along the Aleutian Islands. Harvest is seasonally apportioned to A and B seasons for vessels greater than 60 feet length overall. The A season is January 1 through June 10 and the B season is June 10 through December 31. The annual TAC is apportioned 60 percent to the A season and 40 percent to the B season.

Bering Sea Sablefish Pot

Sablefish are harvested in relatively deep water along the continental slope (100–1,000 m) and along the Aleutian Islands. From 1996 to 2007, directed fisheries for sablefish have only been open to vessels using hook-and-line and pot gear in the BSAI. In 1995, sablefish

(as well as Pacific halibut) became a closed fishery for fixed gear based on historical participation. An individual fishing quota (IFQ) program was implemented, which assigns quota shares on an annual basis to authorized fishermen (50 CFR 679(d)). The directed sablefish fishery is open only to IFQ shareholders who use fixed gear (hook-and-line or pot gear) and starting in 2008 trawl catcher processors in the Amendment 80 cooperative. In 2009, 10 pot catcher vessels were active in this fishery.

Negligible Impact Determinations

Humpback Whale, Central North Pacific Stock

A NID for the CNP humpback whale was issued recently (75 FR 29984, May 28, 2010). That analysis included incidental taking by commercial fisheries in both Alaska and Hawaii waters. At the time, permits were issued to Hawaii-based fisheries but not to Alaska fisheries. NMFS has reviewed new information available since it issued the NID and confirms the NID for CNP humpback whales.

The current CNP humpback NID estimated mortality and serious injury of CNP humpback whales incidental to commercial fishing operations in HI and AK totaled 5.4 whales per year, which is 26.5 percent of the stock's PBR level. NMFS concluded that incidental mortality and serious injury at this total rate will have a negligible impact on CNP humpback whales. The time frame for the data used in that analysis was the five-year period from 2003 through 2007, pending availability of recent data. More recent information provided in the dSAR (Allen and Angliss, 2010) for the CNP humpback whale now estimates the PBR = 61.2 animals based on updated population assessment information and an increase of the Recovery Factor (RF) used to calculate PBR to 0.3. The dSAR provides a revised estimate for mortality and serious injury of CNP humpback whales incidental to commercial fishing operations in HI and AK at 3.8 whales per year, which is 6.2 percent of the stock's PBR level. Accordingly, NMFS reiterates the conclusion reached by the CNP humpback NID: Incidental mortality and serious injury due to commercial fisheries will have a negligible impact on CNP humpback whales based on the best scientific information for the 5-year period from 2003 through 2007, with inclusion, where available, of more recent data.

Humpback Whale, Western North Pacific Stock

NMFS has evaluated the best available information in assessing the interactions between ESA-listed WNP humpback whales and Alaska fisheries (including observer data), other fisheries (using primarily stranding and sightings data), and other sources of human-caused serious injury and mortality, to determine whether the incidental mortality and serious injury from all commercial fisheries will have a negligible impact on the stock. Allen and Angliss (2010) use an annual rate of increase of 7 percent for this stock and note this rate is considered conservative for the stock. One humpback whale mortality, reported in the Bering Sea sablefish pot fishery during the 2002–2006 period, occurred in an area of overlap between the WNP and CNP humpback stocks. Because of the uncertainty of stock assignment of that take, NMFS evaluated the potential impacts of this mortality on each of the possible source stocks. If this mortality removed an individual from the WNP stock, the mean annual mortality and serious injury rate for this stock attributable to commercial fisheries is 0.2 whales per year (Table 3 in the accompanying NID). NMFS stranding data contain no reports of fisheries-related WNP humpback whale strandings or entanglements; no mortalities or serious injuries have been recorded due to ship strikes. Thus, the estimated annual total human-caused injury rate for the WNP stock of humpback whales in the U.S. Exclusive Economic Zone (EEZ) for 2002–2006 is 0.2 whales per year. The PBR for this stock is 2.0 animals per year. NMFS regulations to classify fisheries in the annual LOF state that where total serious injury and mortality across all fisheries are equal to or less than 10 percent of a stock's PBR, all fisheries interacting with this stock would be placed in Category III. NMFS intends to propose changing fishery to Category III for the 2012 LOF, based on the current level of total serious injury and mortality from this stock (equal to 10 percent of the stock's PBR) and no takes of other marine mammals that would place it in Category II.

Accordingly, total human-caused mortality and serious injury are below the PBR for this stock. Because, as described in the accompanying NID, the stock is stable or increasing and annual human-caused mortality and serious injury are equal to 10 percent of PBR, NID Criterion (3) is the appropriate criterion for consideration. Under NID Criterion (3) fishery-related mortality and serious injury would be considered negligible if such mortality and serious injury, in combination with other human sources of mortality, do not exceed PBR, subject to individual review and certainty of data. The NID Criterion (3) is satisfied in determining that mortality and serious injuries of the WNP humpback stock incidental to commercial fishing would have a negligible impact on the WNP humpback whale stock. This determination is supported by review of mortality and serious injury incidental to U.S. commercial fishing, stable or increasing growth rate of the stock, limited potential for increases in serious injury and mortality due to the relevant fisheries, the fact that total human-caused mortality and serious injury is below the estimated PBR and is not expected to delay recovery of the stock by more than 10 percent more than recovery time if these removals did not occur. Additional information is available in the draft NID.

Fin Whale, Northeast Pacific Stock

NMFS evaluated the best available information in assessing the interactions between ESA-listed NEP fin whales and Alaska fisheries (including observer data), other fisheries (using primarily stranding and sightings data), and other sources of human-caused serious injury and mortality, in order to determine whether the incidental mortality and serious injury from all commercial fisheries will have a negligible impact on the stock. Allen and Angliss (2010) reported an annual rate of increase of 4.8 percent and a PBR of 11.4 for this stock. Mortality of one NEP fin whale was reported in the Bering Sea/Aleutian Islands pollock trawl fishery during the 2002–2006 period, and the mean annual mortality and serious injury rate incidental to commercial fisheries is 0.23 whales per year (Table 10 in the accompanying NID). NMFS stranding data contain no reports of fisheries-related NEP fin whale strandings or entanglements in the EEZ offshore of Alaska. Based on the one mortality reported and investigated during 2002–2006, the minimum mean annual mortality/serious injury from ship strikes is 0.20 fin whales per year in Alaska. The estimated minimum annual total human-caused mortality and serious injury rate for the NEP stock of fin whales in the U.S. EEZ for 2002–2006 is 0.43 whales per year. Accordingly, total human-caused mortality and serious injury is below 10 percent of PBR (1.14) for this stock, and evaluation by NID Criterion (1) applies. Because all total human-related serious injuries and mortalities are less than 0.1

PBR, NMFS has determined that mortality and serious injury incidental to commercial fisheries will have a negligible impact on the NEP fin whale stock. Additional information is available in the accompanying draft NID.

Sperm Whale, North Pacific Stock

NMFS has not conducted a complete survey for sperm whales in waters off Alaska, and the abundance of the stock is unknown; therefore, a PBR for this stock is not available. Allen and Angliss (2010) noted that although key elements in understanding the biology and status of the population are currently unavailable, current levels of human-caused mortality and serious injury seem minimal for this stock. Criterion (1) in the 1999 guidelines indicates that total human-caused mortality and serious injury of the stock that is less than 10 percent of the stock's PBR would have a negligible impact on the affected stock. Allen and Angliss (2010) estimate that the Gulf of Alaska groundfish fishery takes (by serious injury and mortality) an annual mean of 3.5 sperm whales. No other mortality or serious injury of sperm whales is reported or observed incidental to commercial fisheries in Alaska. No other sources of human-caused mortality and serious injury of sperm whales are reported in Alaska. The draft 2010 Pacific SAR for sperm whales in California, Oregon and Washington reports an annual rate of 0.2 human-caused deaths of sperm whales per year. Therefore, human-cause mortality and serious injury of sperm whales in the North Pacific stock may be estimated as 3.7.

The formula for calculating PBR of North Pacific sperm whales can be re-arranged to estimate the minimum number of sperm whales that would be required for 3.7 to be 10 percent or less of the stock's PBR. Rearranging the formula and solving for the minimum abundance estimate results in a minimum abundance of 18,500 sperm whales. Citing multiple sources, the draft BiOp (NMFS, 2010) states that practical working estimates of sperm whale abundance for the entire North Pacific range from 100,000 to 200,000 and that the number of sperm whales in the eastern North Pacific has been estimated to be 39,200.

The best available information (as reported in the draft BiOp and Allen and Angliss, 2010) indicates that there are sufficient sperm whales in the eastern North Pacific Ocean so that human-caused mortality and serious injury are less than 10 percent of a PBR for sperm whales in the eastern North Pacific Ocean. Accordingly, the mortality and serious injury of North Pacific sperm whales incidental to commercial fishing would not cause more than a 10 percent delay in the time for the stock to recover. Therefore, NMFS has determined that mortality and serious injury incidental to commercial fishing will have a negligible impact on the North Pacific stock of sperm whales.

Steller Sea Lion, Western U.S. Stock

NMFS has evaluated the best available information to assess population status and trend and to evaluate the effect of interactions between Western U.S. stock of Steller sea lions and commercial fisheries in Alaska (including observer data), other fisheries (based on the scientific literature), and other sources of human-caused serious injury and mortality (surveys, anecdotal reports, and stranding and sightings data), to determine whether the incidental mortality and serious injury from all commercial fisheries will have a negligible impact on the stock. Recent exhaustive reviews of population status and trend have been completed by NMFS as part of the draft BiOp on the Alaska groundfish fisheries (NMFS 2010) and the stock assessment reports (SARs; Allen and Angliss 2010). Although the stock continues to decrease in the Western and Central Aleutians, it has, since 2004, been increasing in the Eastern Aleutians. The recent trend in the Gulf of Alaska has been one of short-term fluctuation in the central and western portions with a possible increase in the eastern portion likely related to a seasonal migration of individuals from the Eastern U.S stock of Steller sea lions. The draft BiOp indicates that the overall population of the Western U.S. stock of Steller sea lions is stable and may be increasing at an annual rate of 1.5 percent (not statistically significant) (NMFS 2010).

The estimated minimum mean mortality and serious injury rate incidental to commercial fisheries over the 2002–2006 period is 26.2 Western U.S. stock Steller sea lions per year (Table 5 in the accompanying NID); 0.25 for the Bering Sea/Aleutian Islands Atka mackerel trawl, 3.01 for the Bering Sea/Aleutian Islands flatfish trawl, 0.85 for the Bering Sea/Aleutian Islands Pacific cod trawl, 3.83 for the Bering Sea/Aleutian Islands pollock trawl, 1.33 for the Gulf of Alaska pollock trawl, 1.98 for the Bering Sea/Aleutian Islands Pacific cod longline and 14.5 in the Prince William Sound salmon drift gillnet. The total is greater than 10 percent of PBR (25.4 animals) and less than this stock's PBR (254 animals). The mean annual Alaska native subsistence take from this stock is estimated to be 197 Western U.S. stock Steller sea lions per year. NMFS calculates there is an average of 0.6 Steller sea lion mortalities per year due to permitted research activities. Based on available data, the estimated total human-caused mortality and serious injury (223.8) are less than the PBR (254) for this stock. Data available for estimating human caused mortality and serious injury in commercial fisheries for this permit are largely based on extensive and ongoing fisheries observer programs designed to address those fisheries known or believed most likely to interact with this stock. In some cases mortality data include opportunistic reports (*e.g.,* strandings, subsistence harvest) or old observations (*e.g.,* observation of the PWS drift gillnet salmon fishery in the early 1990s).

Because fishery-related mortality and serious injury slightly exceed 10 percent of PBR, the stock is stable or increasing, and total annual human-caused mortality and serious injury are less than PBR, NID Criterion (3) is the appropriate criterion for consideration. The NID Criterion 3 is satisfied in determining that mortality and serious injuries of Western U.S. stock Steller sea lions incidental to commercial fishing will have a negligible impact on the stock because population growth is stable or increasing, the fishery-related mortalities and serious injuries (26.2) are less than PBR (254). This determination is supported by review of mortality and serious injury incidental to U.S. commercial fishing and other human related mortality and serious injury, a stable or increasing population trend, limited potential for increases in serious injury and mortality due to the relevant fisheries, the fact that total human-caused mortality and serious injury is below the estimated PBR and are not expected to delay recovery of the stock by more than 10 percent more than recovery time if these removals did not occur. Additional information is available in the draft NID.

Steller Sea Lion, Eastern U.S. Stock

NMFS evaluated the best available information to assess population status and trend and in evaluating the effect of interactions between the ESA-listed Eastern U.S. stock of Steller sea lions and commercial fisheries in Alaska (including observer data), other fisheries (based on the scientific literature), and other sources of human-caused serious injury and mortality (surveys, reports, and stranding and sightings data), to determine whether the incidental

mortality and serious injury from all commercial fisheries will have a negligible impact on the stock. Recent reviews of population status and trends have been completed by NMFS as part of the (draft) BiOp on the Alaska groundfish fisheries (NMFS, 2010) and the SARs (Allen and Angliss, 2010). These reviews indicate the stock is increasing at minimum of 3.1 per cent per year. The minimum estimated mortality and serious injury rate incidental to commercial fisheries (both U.S. and Canadian) is 25.6 Eastern U.S. stock Steller sea lions per year, (Tables 8 and 9 in the accompanying NID); 0.8 for the WA/OR/CA groundfish trawl and 24.8 in the Alaska salmon troll fishery. The total estimated annual mortality due to commercial fishing is less than 10 percent of this stock's PBR (2,378 animals).

The mean annual Alaska native subsistence take from this stock is estimated to be 11.9 Steller sea lions per year. NMFS calculates there is an average of 0.8 mortalities per year due to illegal shooting of Steller sea lions from the Eastern U.S. stock, an average of 0.6 "other non-fishery human-related" mortalities in Oregon and Washington, and an average of 1.8 Eastern U.S. stock of Steller sea lion mortalities per year due to permitted research activities. Based on available data, the estimated total human-caused mortality and serious injury (40.7) are less than 10 percent of the stock's PBR (237.8). Data available for estimating human-caused mortality and serious injury in commercial fisheries are largely based on both historic and ongoing fisheries observer programs designed to address those fisheries known or believed most likely to interact with this stock. NMFS is aware that, in some cases, mortality data are based on opportunistic reports (*e.g.* strandings, subsistence harvest) or on observations where it is impossible to determine with certainty if the mortality and serious injury occurred as a result of the recreational or commercial parts of the fishery due to the similarity of the gear used in these southeast Alaska salmon troll fisheries.

Because total human-caused mortality and serious injury is below 10 percent of PBR for this stock, NID Criterion 1 is satisfied. NMFS has determined that the annual mortality and serious injury incidental to commercial fisheries will have a negligible impact on the Eastern U.S. stock of Steller sea lions. Additional information is available in the accompanying draft NID.

Conclusions for Proposed Permit

Based on the above assessment and as described in the accompanying NID, NMFS concludes that the incidental mortality and serious injury from commercial fishing will have a negligible impact on the CNP stock of humpback whales, the WNP stock of humpback whales, the NEP stock of fin whales, the North Pacific stock of sperm whales, the Western U.S. stock of Steller sea lions, and the Eastern U.S. stock of Steller sea lions. The impacts on the human environment of continuing and modifying the Alaska groundfish fisheries, including the taking of threatened and endangered species of marine mammals, were analyzed in Alaska Groundfish Fisheries Final Supplemental Programmatic Environmental Impact Statement (June 2004; *http://www.fakr.noaa.gov/sustainablefisheries/seis/*), the Biological Assessment of the Alaska Groundfish Fisheries and NMFS Managed Endangered Species Act Listed Marine Mammals and Sea Turtles (NMFS 2006; *http://stellersealions.noaa.gov/sustainablefisheries/sslmc/agency_documents/BA4–6–06.pdf*) pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*), and in the draft BiOp prepared for the Alaska groundfish fisheries (NMFS, 2010) pursuant to the ESA. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents. NMFS now reviews the remaining requirements to issue a permit to take the subject listed species incidental to the Alaska groundfish fisheries.

Recovery Plans

Recovery Plans for humpback whales and Steller sea lions of the subject listed species have been completed. Recovery plans for fin and sperm whales have been drafted and are being completed. These draft and final recovery plans are available on the Internet (*see* **ADDRESSES**). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Vessel Registration

MMPA section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Participants in the Alaska groundfish fisheries are required to hold a permit under 50 CFR 665.21. The MMPA registration program has been integrated in this permitting system for the Alaska-based groundfish fisheries. Accordingly, vessels in the fisheries are registered in accordance with MMPA section 118.

Monitoring Program

As noted above, Federally-permitted commercial fisheries in Alaska have been observed since the early 1990s. Levels of observer coverage vary over years but are adequate to produce reliable estimates of mortality and serious injury of listed species (*e.g.,* during the 2002–2006 period, coverage ranged from 58.4–68.3 percent in the Bering Sea/Aleutian Islands flatfish trawl, 73.0–82.2 percent in the Bering Sea/Aleutian Islands pollock trawl, 23.8- 29.6 percent for the Bering Sea/Aleutian Islands Pacific cod longline, and 21.7- 40.6 percent in the Alaska Bering Sea sablefish pot fishery). Accordingly, as required by MMPA section 118, a monitoring program is in place.

Take Reduction Plans (TRP)

Subject to available funding, MMPA section 118 requires a TRP in cases where a strategic stock interacts with a Category I or II fishery. The stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA. These strategic stocks interact with the Category II fisheries described above, and no TRPs have been developed for them. The short- and long-term goals of a TRP are to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR and to a zero mortality rate goal (indicated by meeting the threshold for placement in the annual LOF Category III), respectively. However, the obligations to develop and implement a TRP are subject to the availability of funding. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs.

NMFS has insufficient funding available to simultaneously develop and implement TRPs for all stocks that interact with Category I or Category II fisheries. Most recently in March 2009, NMFS considered multiple quantitative and qualitative factors to identify its priorities for establishing take reduction teams (TRTs) and collecting data. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the WNP and CNP stocks of humpback whale, the North Pacific stock of sperm whales, and the Western U.S. stock of Steller sea lions as "low" priorities for establishing TRTs,

based on population trends of each stock and mortality and serious injury levels incidental to commercial fisheries that are below the stocks' PBRs. Accordingly, given these factors and NMFS' prioritization process, TRPs will be deferred under section 118 as other stocks have a higher priority for any available funding for establishing new TRPs.

Mortality and serious injury of Steller sea lions, Eastern U.S. stock, and NEP fin whales incidental to commercial fisheries are at insignificant levels, approaching a zero mortality and serious injury rate (Allen and Angliss, 2010). MMPA section 118(b)(2) states that fisheries maintaining such mortality and serious injury levels are not required to further reduce their mortality and serious injury rates. Because the goals of TRPs are to reduce mortality and serious injury of marine mammals incidental to commercial fishing operations, no TRPs are required for either of these stocks.

As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized and State-parallel Category II groundfish fisheries have been satisfied: the AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Islands pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries. Accordingly, NMFS proposes to issue a permit to participants in these Category II fisheries for the taking of CNP humpback whales, WNP humpback whales, NEP fin whales, North Pacific sperm whales, Steller sea lions (Western U.S. stock), and the Steller sea lions (Eastern U.S. stock) incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fishery. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortalities must be reported to NMFS. NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit.

References

Allen, B.M., and R.P. Angliss (eds.). 2010. (Draft) Alaska Marine Mammal Stock Assessments, 2010. NMFS, National Marine Mammal Laboratory, Seattle WA.

NMFS. 2010. Draft Biological Opinion for Authorization of Groundfish Fisheries under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Island Management Area, Authorization of Groundfish Fisheries under the Fishery Management Plan for Groundfish of the Gulf of Alaska, and the State of Alaska Parallel Groundfish Fisheries. NMFS, Alaska Region, Juneau, AK. (*http://stellersealions.noaa.gov/protectedresources/stellers/esa/biop/draft/0810.htm.)*

Dated: November 4, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–28280 Filed 11–8–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on December 6, 2010, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on December 6th, 2010, from 8 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall, U.S. Naval Academy, Annapolis, Maryland. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David S. Forman, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11 a.m. to 12 p.m. on December 6, 2010, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c) (5), (6), and (7) of title 5, United States Code.

Dated: November 2, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–28270 Filed 11–8–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel will hold a regularly scheduled meeting. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, December 8, 2010, from 8:30 a.m. to 5:30 p.m. and Thursday, December 9, 2010, from 8:30 a.m. to 2 p.m. Members of the public should submit their comments in advance of the meeting to the meeting point of contact.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership, 1201 New York Avenue, NW., 4th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on

ocean research, resource management, and other current issues in the ocean science and management communities.

Dated: November 2, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–28217 Filed 11–8–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 9, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 3, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Targeted Teacher Shortage Areas.

OMB Control Number: 1840–0595.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 57.

Total Estimated Annual Burden Hours: 4,560.

Abstract: This request is for approval of record-keeping and reporting requirements that are contained in the Federal Family Education Loan Programs regulations which address the targeted teacher deferment provision of the Higher Education Act of 1965, as amended. The information collected is necessary for a State to support its annual request for designation of teacher shortage areas within the State. The collection of certification documentation by the borrower/scholar/grantee is necessary to support his/her request for deferment/reduction in teaching obligation or cancellation of their loan debt.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4380. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–28235 Filed 11–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, Department of Education.

ACTION: Notice of December 1–3, 2010 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI); changes to the proposed agenda for the meeting; and information related to members of the public making third-party oral comments at the meeting.

SUMMARY: This notice sets forth changes to the proposed December 1–3, 2010 NACIQI meeting agenda that was published in the August 23, 2010 **Federal Register** (75 FR 21280); a complete listing of the proposed agenda items for the December 1–3, 2010 NACIQI meeting, as revised; and information related to members of the public making oral comments at the meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA) and section 114(d)(1)(B) of the Higher Education Act (HEA).

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., Room 8060, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

Meeting Date and Place: The NACIQI meeting will be held on December 1–3, 2010, from 8:30 a.m. to approximately 5:30 p.m., Eastern Standard Time, at the U.S. Department of Education, Eighth Floor Conference Center, 1990 K Street, NW., Washington, DC.

Changes to Proposed Agenda: Since the publication of the August 23, 2010 **Federal Register** notice, the Department has added an item to the proposed agenda: The review of the National Defense University (NDU), as required by 10 U.S.C., section 2163, for the purpose of evaluating the proposed awarding of the NDU's Master of Science degree in Government Information Leadership.

Also, due to two different agencies' requests, the Department removed the Western Association of Schools and Colleges Accrediting Commission for Schools and AdvancED from the proposed December meeting agenda. The Western Association of Schools and Colleges Accrediting Commission for Schools decided to withdraw from recognition and AdvancED decided to withdraw its request for initial recognition.

Other proposed agenda topics for the December meeting will include the review of agencies that have submitted petitions for the renewal of recognition, and the review of agencies that have submitted compliance reports/interim reports.

Proposed Agenda: The following agencies are tentatively scheduled for review during the December 1–3, 2010 NACIQI meeting:

Nationally Recognized Accrediting Agencies

Compliance Reports

1. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission.
2. Commission on Accreditation of Healthcare Management Education.
3. Council on Accreditation of Nurse Anesthesia Educational Programs.
4. Council on Education for Public Health.
5. Northwest Commission on Colleges and Universities (progress report).
6. The Higher Learning Commission of the North Central Association of Colleges and Schools.

Petitions for Renewal of Recognition

1. American Academy for Liberal Education.
2. American Board of Funeral Service Education.
3. American Speech Language Hearing Association, Council on Academic Accreditation in Audiology and Speech-Language Pathology.
4. Commission on Massage Therapy Accreditation.
5. Council on Naturopathic Medical Education.
6. Midwifery Education Accreditation Council.
7. Montessori Accreditation Council for Teacher Education, Commission on Accreditation.
8. National Accrediting Commission of Cosmetology Arts and Sciences.

State Agencies Recognized for the Approval of Nurse Education

1. Missouri State Board of Nursing.

Federal Agency Seeking Degree-Granting Authority

1. National Defense University, Washington, DC (request to award a Master of Science degree in Government Information Leadership).

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget. The Secretary uses the NACIQI as the review committee required for this purpose.

NACIQI'S Statutory Authority and Functions: The NACIQI is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, HEA, as amended.
- The recognition of specific accrediting agencies or associations, or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

Instructions for Making a Third-Party Oral Comment at the December 2010 NACIQI Meeting: There are two methods the public may use to make a third-party oral comment of three to five minutes concerning one of the agencies tentatively scheduled for review during the December 1–3, 2010 meeting.

The first method is to submit a written request by e-mail in advance of the meeting to make a third-party oral presentation. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak, for up to a maximum of three minutes each. Each request must concern the recognition of a single agency or institution tentatively scheduled in this notice for review, must be received no later than November 22, 2010, and must be sent to *aslrecordsmanager@ed.gov* with the subject line listed as "Oral Comments re: (agency/institution name)." Your request (no more than one page maximum) must include:

1. The name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak, and
2. A brief summary of the principal points to be made during the oral presentation.

Only requests made in accordance with these instructions will result in an opportunity to speak under this method. Individuals making oral presentations may not distribute written materials at the meeting. Please do not send material directly to the NACIQI members.

The second method is to sign up on the day of the meeting to make oral comments during the NACIQI's deliberations about an agency or institution scheduled for review. The requester should provide his or her name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any). A total of up to 15 minutes during each agency's/institution's review will be allotted for commenters who sign up the day of the meeting (in addition to those commenters who signed up in advance); and, if a person or group requests to make comments in advance, they cannot also sign-up to make comments the day of the meeting. Individuals or groups that sign up on the day of the meeting will be selected on a first-come, first served basis. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who signed up the day of the meeting.

Members of the public will be eligible for making third-party oral comments only in accordance with these instructions. Their comments will become part of the official record and will be considered by the Department and the NACIQI in their deliberations. Individuals and groups making oral presentations may not distribute written materials at the meeting.

Oral comments about agencies seeking continued recognition or presenting a compliance/interim report must relate to the Criteria for the Recognition of Accrediting Agencies, or the Criteria and Procedures for Recognition of State Agencies for Nurse Education, which are available at *http://www.ed.gov/admins/finaid/accred/index.html.*

If the Committee is reviewing an agency's petition, comments must relate to whether the agency meets the Criteria for Recognition. If the Committee is reviewing an agency's compliance/interim report, comments must relate to the NACIQI's area of consideration, which will be whether the agency has demonstrated compliance with the

specific criteria specified in the Department's request for the report. Third parties having concerns about agencies regarding matters outside the scope of the requested compliance report should report those concerns to Department staff.

Comments concerning the National Defense University's degree-granting authority request must relate to the criteria used to evaluate the institution. Those criteria may be obtained by submitting a request to *aslrecordsmanager@ed.gov,* with the subject line listed as "Request for Degree-Granting Authority Criteria."

This notice invites third-party oral testimony, not written comment. Requests for written comments on agencies that are tentatively scheduled for review during the meeting were published in the **Federal Register** (75 FR 21280) on August 23, 2010. The NACIQI will receive and consider only written comments that were submitted by the September 23, 2010 deadline specified in the above referenced **Federal Register** notice.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street, NW., Washington, DC, by e-mailing the *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/legislation/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–866–512–1830; or, in the Washington, DC area at (202) 512–0000.

Reasonable Accommodations: Individuals who will need accommodations for a disability in order to attend the December 1–3, 2010 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format) should contact Department staff by telephone: (202) 219–7011; or, e-mail: *aslrecordsmanager@ed.gov,* no later than November 22, 2010. We will attempt to meet requests after this date but cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

FOR FURTHER INFORMATION: Contact Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011; e-mail: *Melissa.Lewis@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–28255 Filed 11–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–14–000]

Columbia Gulf Transmission Company, Southern Natural Gas Company; Notice of Application

November 2, 2010.

Take notice that on October 21, 2010, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe, Suite 2500, Houston, Texas 77056, and Southern Natural Gas Company (Natural Gas), Colonial Brookwood Center, 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, jointly filed in Docket No. CP11–14–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting that the Commission grant Columbia Gulf approval to abandon (1) certain jointly owned natural gas facilities located offshore in East Cameron Block 23 (EC23 offshore facilities), and onshore in Cameron Parish, Louisiana; and (2) the services currently provided through the EC23 offshore facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to counsel of Columbia Gulf, Fredric J. George, Senior Counsel, Columbia Gulf Transmission Company, P.O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or by e-mail at *fgeorge@nisource.com.*

Specifically, Columbia Gulf filed an application requesting approval for abandonment of approximately 6.3 miles of 16-inch pipeline offshore Louisiana, and approximately 3.0 miles of 16-inch pipeline onshore in Cameron Parish, Louisiana, as well as measuring equipment, and appurtenances located in EC23 offshore facilities and the services provided through the facilities.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to

the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 23, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28230 Filed 11–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 2, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4109–006; ER99–3426–012; ER03–175–010; ER03–394–008; ER03–427–008; ER04–170–010; ER05–440–004; ER07–265–013; ER08–100–012; ER09–1453–003.

Applicants: El Dorado Energy, LLC; San Diego Gas & Electric Company Termoelectrica U.S., LLC; Elk Hills Power, LLC; Mesquite Power, LLC; MxEnergy Electric Inc.; Sempra Generation; Sempra Energy Solutions LLC; Sempra Energy Trading LLC; Gateway Energy Services Corporation.

Description: Sempra Supplement to Triennial Market-Based Rate Update.

Filed Date: 11/01/2010.

Accession Number: 20101101–5197.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER99–705–006.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Notice of Change in Status of Golden Spread Electric Cooperative, Inc.

Filed Date: 11/01/2010.

Accession Number: 20101101–5203.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER07–1117–018; ER05–1232–032; ER01–2765–033; ER00–2885–034; ER02–1437–008; ER02–2102–033; ER09–1141–013.

Applicants: Triton Power Michigan LLC, BE KJ LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Cedar Brakes II, L.L.C., J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation.

Description: BE KJ LLC, Triton Power Michigan LLC, J.P. Morgan Ventures Energy Corporation et al submits Notice of Non-Material Change in Status.

Filed Date: 10/29/2010.

Accession Number: 20101029–5258.

Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: ER10–1196–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance Filing of PJM Interconnection, L.L.C.

Filed Date: 11/01/2010.

Accession Number: 20101101–5198.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER10–2753–002.

Applicants: Domtar Corporation.

Description: Domtar Corporation submits tariff filing per 35: eTariff Compliance Filing to be effective 9/20/2010.

Filed Date: 11/02/2010.

Accession Number: 20101102–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER10–2782–001.

Applicants: Midwest Generation LLC.

Description: Midwest Generation LLC submits tariff filing per 35: Midwest Generation, LLC Reactive Supply and Voltage Control Tariff to be effective 9/21/2010.

Filed Date: 11/01/2010.

Accession Number: 20101101–5091.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–110–000.

Applicants: Oklahoma Gas & Electric Company.

Description: Request for Waiver of Oklahoma Gas & Electric.

Filed Date: 10/07/2010.

Accession Number: 20101007–5121.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: ER11–1987–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: PJM Ministerial Filing to reflect Tariff and OA Language Accepted in ER10–1196 to be effective 1/1/2011.

Filed Date: 11/01/2010.

Accession Number: 20101101–5123.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1988–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): PJM Tariff and OA Revisions—Sept. 3, 2010 Order and Directives re: ER10–1196 to be effective 1/1/2011.

Filed Date: 11/01/2010.

Accession Number: 20101101–5130.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1989–000.

Applicants: Columbus Southern Power Company.

Description: Columbus Southern Power Company submits tariff filing per 35.12: 20101101—CSP RS and SA to be effective 11/2/2010.

Filed Date: 11/01/2010.
Accession Number: 20101101–5143.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1990–000.
Applicants: Ohio Power Company.
Description: Ohio Power Company submits tariff filing per 35.12: 20101101—OPCo RS and SA to be effective 11/2/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5144.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1991–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to their Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fifth Revised Volume No 1, effective 3/1/2011.
Filed Date: 11/01/2010.
Accession Number: 20101101–5161.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1992–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): Third Revised ETEC PCIA to be effective 1/1/2011.
Filed Date: 11/01/2010.
Accession Number: 20101101–5165.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1993–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Extend Term of Eldorado Conveyance & Co-Tenancy and Communication Agreements to be effective 1/1/2011.
Filed Date: 11/01/2010.
Accession Number: 20101101–5166.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1994–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(i): Herington and Wamego, KS Schedule WTU–01/2011, Wholesale Svc Municipalities to be effective 1/1/2011.
Filed Date: 11/01/2010.
Accession Number: 20101101–5169.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1995–000.
Applicants: Columbus Southern Power Company.
Description: Columbus Southern Power Company submits tariff filing per 35.13(a)(2)(iii): 20101101 CSP FRR Filing to be effective 11/2/2010.
Filed Date: 11/01/2010.
Accession Number: 20101101–5170.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1996–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(i): City of Eudora, KS WSM–01/2011, Wholesale Svc Municipalities to be effective 1/1/2011.
Filed Date: 11/01/2010.
Accession Number: 20101101–5172.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–1997–000.
Applicants: Ohio Power Company.
Description: Ohio Power Company submits tariff filing per 35.13(a)(2)(iii): OPCo FRR Cap Comp to be effective 11/2/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–1998–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(i): McAllister Ranch Service Agreement No. 58 to be effective 1/1/2011.
Filed Date: 11/02/2010.
Accession Number: 20101102–5001.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–1999–000.
Applicants: New England Power Pool.
Description: New England Power Pool submits their member application and termination of memberships.
Filed Date: 11/01/2010.
Accession Number: 20101102–0201.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–2000–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 214 of Florida Power Corporation to be effective 12/31/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2001–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement—Pacific Gas and Electric Company.
Filed Date: 11/01/2010.
Accession Number: 20101101–5195.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–2002–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Notice of Cancellation of Rate Schedule WM–1, First Revised Service Agreement No. 93, of Oklahoma Gas and Electric Company.
Filed Date: 11/01/2010.
Accession Number: 20101101–5196.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–2003–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Company submits tariff filing per 35.12: Balancing Agreement between TEP and Red Mesa to be effective 11/3/2010.
Filed Date: 11/02/2010.
Accession Number: 20101102–5074.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Docket Numbers: ER11–2004–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): Revisions to Rate Schedule No. 318 to be effective 1/1/2011.
Filed Date: 11/02/2010.
Accession Number: 20101102–5084.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 23, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–8–000.
Applicants: PJM Interconnection, L.L.C., PJM Settlement, Inc.
Description: Application of PJM Interconnection, L.L.C., and PJM Settlement, Inc. Under Section 204 of the Federal Power Act for an Order Authorizing Issuances of Securities and Approving Guaranty.
Filed Date: 11/01/2010.
Accession Number: 20101101–5202.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA11–1–000; OA11–2–000.
Applicants: Golden Spread Electric Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC.
Description: Request for Waiver of Golden Spread Electric Cooperative, Inc. and Golden Spread Panhandle Wind Ranch, LLC.
Filed Date: 11/01/2010.
Accession Number: 20101101–5194.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28212 Filed 11–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–86–014; Docket No. EL07–88–014; Docket No. EL07–92–014]

Notice of Filing

November 2, 2010.

Docket No. EL07–86–014.

Ameren Services Company; Northern Indiana Public Service Company v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL07–88–014.

Great Lakes Utilities; Indiana Municipal Power Agency; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; Prairie Power, Inc; Southern Minnesota Municipal Power Agency; Wisconsin Public Power Inc. v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL07–92–014.

Wabash Valley Power Association, Inc. v. *Midwest Independent Transmission System Operator, Inc.*

Take notice that on October 29, 2010, The Midwest Independent Transmission System Operator, Inc. filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff, Fourth Revised Volume, pursuant to the Federal Energy Regulatory Commission's Order issued August 30, 2010, *Midwest Indep. Trans. Sys. Operator, Inc.,* 132 FERC ¶ 61,186 (2010) (August 30 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28231 Filed 11–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–2–000]

Milford Wind Coordinator Phase I, LLC; Notice of Filing

November 2, 2010.

Take notice that on November 1, 2010, Milford Wind Coordinator Phase I, LLC (Milford) filed an appeal with the Federal Energy Regulatory Commission (Commission) of the October 6, 2010 decision of the North American Electric Reliability Corporation (NERC) Board of Trustees Compliance Committee denying an appeal for inclusion on the NERC Compliance Registry as a Transmission Owner and Transmission Operator.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28233 Filed 11–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–1–000]

Cedar Creek Wind Energy, LLC; Notice of Filing

November 2, 2010.

Take notice that on October 27, 2010, Cedar Creek Wind Energy, LLC (Cedar Creek) filed an appeal with the Federal Energy Regulatory Commission (Commission) of the October 6, 2010 decision of the North American Electric Reliability Corporation (NERC) Board of Trustees Compliance Committee affirming a determination by the Western Electricity Coordinating Council that Cedar Creek be included on the NERC Compliance Registry as a Transmission Owner and Transmission Operator.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–28232 Filed 11–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD11–1–000]

Reliability Monitoring, Enforcement and Compliance Issues; Agenda for the Technical Conference

November 2, 2010.

The Federal Energy Regulatory Commission (Commission) issued a notice on October 1, 2010 that it will hold a Commissioner-led Technical Conference on November 18, 2010 in the above-referenced proceeding to explore issues associated with reliability monitoring, enforcement and compliance. The Commission announced the conference in its September 16, 2010 order that accepted the North American Electric Reliability Corporation's initial assessment in Docket No. RR09–7–000 of its performance as the nation's Electric Reliability Organization (ERO), and performance by the Regional Entities, under their delegation agreements with the ERO.[1]

This Technical Conference will be held in the Commission Meeting Room (2C) at Commission Headquarters, 888 First Street, NE., Washington, DC 20426, from 1 p.m. until 5 p.m. EST. Attached is the Agenda for the conference. The Commission will issue a later notice that lists the panelists for the conference.

The conference will be transcribed and Webcast. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). A free webcast of the conference is also available through *http://www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

All interested parties are invited and there is no registration list or registration fee to attend.

For further information, contact Roger Morie by e-mail at *roger.morie@ferc.gov* or by phone at 202–502–8446 (before November 11, 2010), and Gregory Campbell by e-mail at *gregory.campbell@ferc.gov* or by phone at 202–502–6465 (after November 11, 2010).

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28211 Filed 11–8–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *North American Electric Reliability Corporation; Reliability Standards Development and NERC and Regional Entity Enforcement,* 132 FERC ¶ 61,217, at P 12 (2010).

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Workforce Guidelines for Home Energy Upgrades

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

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Department of Energy Office of Energy Efficiency and Renewable Energy (EERE) announces the availability of a set of Standard Work Specifications (SWSs), Job Task Analyses (JTAs) and essential Knowledge, Skills and Abilities (KSAs) applicable to energy efficiency retrofits of single family homes which together constitute the *Workforce Guidelines for Home Energy Upgrades* ("Workforce Guidelines"). These Workforce Guidelines are intended for voluntary adoption by the Weatherization Assistance Program, EPA Home Performance with Energy Star program partners, State, municipal and utility ratepayer-funded energy efficiency retrofit programs, and private sector home performance contractors, as well as any other organization, company, or individual involved in energy efficiency retrofits of residential homes. Through this notice, DOE also requests public comments on the Workforce Guidelines.

DATES: Comments on the *Workforce Guidelines for Home Energy Upgrades* must be received by 5 p.m. Eastern Time on Friday, January 7, 2011.

ADDRESSES: A draft of the Workforce Guidelines is available for review and public comment online at: *http://www.weatherization.energy.gov/retrofit_guidelines.*

You may also submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Via Internet: http://www.weatherization.energy.gov/retrofit_guidelines.*
- *By e-mail: retrofit.guidelines@nrel.gov.*
- *By mail:* Retrofit Guidelines, National Renewable Energy Laboratory, 1617 Cole Blvd., Golden, CO 80401–3305.

For further information on how to submit comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Weatherization and Intergovernmental Programs, Mailstop EE–2K, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone number: (202) 287–1553. E-mail: *retrofit.guidelines@nrel.gov.*

Kavita M. Patel, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Phone number: (202) 586–0669. E-mail: *kavita.patel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: EERE has tasked the National Renewable Energy Laboratory with developing a suite of voluntary national guidelines for the work and workforce involved in home energy upgrades. The Workforce Guidelines build upon the considerable body of material already in circulation and the cumulative knowledge gathered throughout the 30-year history of the energy efficiency retrofit industry.

The effort to develop the *Workforce Guidelines for Home Energy Upgrades* has its origins in and is supported by the Weatherization Assistance Program (WAP) Training and Technical Assistance Plan (T&TA). The T&TA plan seeks to ensure that Recovery Act investments help lay a permanent foundation for a stronger WAP. This foundation could also provide WAP workers hired to support Recovery Act implementation with future employment opportunities in the rapidly expanding home performance industry.

Concurrently, in May 2009, the Vice President's Middle Class Task Force asked the White House Council on Environmental Quality (CEQ) to develop recommendations for Federal action to lay the architecture for a self-sustaining home energy efficiency retrofit industry. In response, CEQ facilitated a broad interagency process that resulted in the development of six recommendations described in detail in a report titled Recovery Through Retrofit.[1] These recommendations were carefully crafted to stimulate the growth of a vibrant, private sector-led market for residential energy efficiency retrofits.

The Recovery Through Retrofit Workforce Working Group—which includes DOE, the Department of Labor, the Environmental Protection Agency (EPA), the Department of Education, the Small Business Administration, and other agencies—identified the lack of a skilled and credentialed workforce as a key barrier to scaling up the residential energy efficiency retrofit market. The report recommended establishing a set of national guidelines to promote high-quality energy efficiency retrofit work. DOE developed the Workforce Guidelines in response to this recommendation.

The process of developing the Workforce Guidelines has involved a historic collaboration between WAP practitioners and trainers, home performance contractors, building scientists, organized labor, healthy homes and worker safety experts, and other professionals in the building trades and throughout the retrofit industry.

The first iteration of the development process involved 60 technical experts and resulted in a first draft of 270 pages of SWSs. A second group of 80 technical experts thoroughly reviewed and edited the draft SWSs, including a WAP programmatic review, 6 climate-specific reviews, a healthy homes review coordinated by the EPA, and a worker health and safety review coordinated by Department of Labor. While development of the SWSs was moving forward, 50 retrofit technicians and trainers from around the country conducted a professionally-facilitated workshop to develop the Job Task Analyses and Essential KSAs for the four most common home energy retrofit job classifications: Energy Auditor, Installer/Technician, Crew Chief, and Quality Assurance Professional/Inspector.

- The Workforce Guidelines consist of four components: *Standard Work Specifications*, a *Technical Standards Reference Guide, Job Task Analyses* and *Knowledge, Skills, and Abilities.*
- *Standard Work Specifications* define the minimum requirements for high quality energy efficiency retrofit work and the conditions necessary to achieve the desired outcomes of a given retrofit measure.
- *Technical Standards* are standards, regulations and codes developed by government, industry or third-party standards development organizations—such as OSHA, EPA, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), ASTM International, and the Building Performance Institute—that define the safety, materials, installation, and application standards relevant to residential building energy efficiency retrofits.
- *Job Task Analyses* identify and catalog all of the tasks a given worker typically performs when completing a suite of energy efficiency improvements in a home.
- *Essential KSAs* identify the minimum knowledge, skills, and abilities that a skilled worker should

[1] *http://www.whitehouse.gov/sites/default/files/Recovery_Through_Retrofit_Final_Report.pdf* (last visited Oct. 7, 2010).

possess to perform high quality energy efficiency retrofit work for the given occupation or job level.

The *Standard Work Specifications* are organized by section, corresponding to the different systems found in residential buildings. Within each section are subtopics and details that contain the critical specification that must be achieved to ensure quality work. Throughout the *Standard Work Specifications* document are footnotes referring to the relevant *Technical Standards,* which are then summarized in Appendix D.

The *Job Task Analyses* and *Essential Knowledge Skills and Abilities* are made up of "Content Outlines" for the four common energy efficiency retrofit job classifications. They were developed by professional psychometricians working with experienced technicians from WAP, the residential energy efficiency retrofit contractor community, and organized labor. The Content Outlines provide a detailed inventory of the minimum knowledge, skills and abilities (both cognitive and psychomotor) that a worker should possess to perform high quality energy efficiency retrofit work.

Once finalized, the Workforce Guidelines will:

1. Enable State and local WAP officials and other residential retrofit program administrators to strengthen their field guides and other work manuals by incorporating the high quality SWSs contained in the Workforce Guidelines.

2. Assist training providers in developing course content and curricula consistent with an industry-recognized suite of Job Task Analyses.

3. Increase workforce mobility up career ladders and across career lattices by establishing a clear set of essential KSAs upon which worker credentials should be based.

4. Build confidence among consumers and the energy efficiency finance community that retrofit work will be completed in a quality manner and produce the expected energy savings and health benefits.

5. Lay the foundation for a more robust worker certification and training program accreditation architecture.

In coordination with the DOE-led effort, the EPA has developed a keystone document pertaining to health considerations in residential energy efficiency upgrades. These EPA *Healthy Indoor Environment Protocols for Home Energy Upgrades* and the DOE Workforce Guidelines were developed in conjunction with one another and are complementary. Both are intended to provide a set of voluntary measures that the WAP and other energy efficiency retrofit efforts can adopt to increase the quality of the retrofit work performed while maintaining or improving the health and safety of the occupant(s).

Together, the DOE and EPA documents will: provide a robust and practical set of resources for retrofit contractors, trainers, and program administrators; help improve the quality of the work performed in this expanding industry; promote occupant health and safety; and drive consumer demand for energy efficiency retrofit services. DOE encourages reviewers of the Workforce Guidelines with a specific interest in healthy indoor environments to also review and comment on the EPA document, available at: *http://www.epa.gov/iaq/homes/retrofits.html.*

Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on the following issues:

- The appropriateness of each of the Standard Work Specifications, both at the chapter level and at the individual task level.
- The citations of technical standards referenced in the Standard Work Specifications.
- The tasks, knowledge skills and abilities identified for the four (4) job descriptions.

Submission of Comments

DOE will accept comments, data, and information regarding the proposed guidelines no later than January 7, 2011. If submitting comments via the DOE Web page, please follow all instructions on the Web page: *http://www.weatherization.energy.gov/retrofit_guidelines.* This Web site is specifically designed for ease of use to facilitate the public comment process. DOE will transfer comments received on our Web site to Regulations.gov for public review.

Comments, data, and information uploaded to Regulations.gov, or submitted via DOE's e-mail address or regular mail should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via regular mail may include one signed paper original.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document that does not include the information believed to be confidential. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include:

(1) A description of the items;

(2) Whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) A date upon which such information might lose its confidential nature due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on November 4, 2010.

Cathy Zoi,

Acting Under Secretary of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2010–28289 Filed 11–8–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0563; FRL- 9224–1; EPA ICR No. 1764.04; OMB Control No. 2060–0348]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.),* this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to

expire on February 28, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 10, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0563, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Michael K. Ciolek, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (D243–05), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4921; fax number: (919) 541–1039; e-mail address: *ciolek.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Previously, EPA submitted the ICR for this rulemaking to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 2, 2007 (72 FR 42409), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR renewal should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0563, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: National Volatile Organic Compound Emission Standards for Consumer Products (Renewal).

ICR numbers: EPA ICR No. 1764.04, OMB Control No. 2060–0348.

ICR Status: This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B, Confidentiality of Business Information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and importers of consumer products.

Estimated Number of Respondents: 732.

Frequency of Response: On occasion.

Estimated Total Annual Hours Burden: 29,613 hours.

Estimated Total Annual Costs: $1,187,537. This includes labor costs of $1,187,537 and no capital or O&M costs.

Changes in Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved Burdens. However, the estimated total annual costs are increased by $91,828 due to increased costs of employment compensation since the previous approval.

Dated: November 3, 2010.

Penny Lassiter,

Acting Director, Sectors Policies and Programs Division.

[FR Doc. 2010–28266 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9223–5]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of EPA decisions identifying water quality limited segments and associated pollutants in California to be listed pursuant to Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(2) requires that States submit and EPA approve or

disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On November 9, 2010, EPA approved California's 2008–2010 submitted 303(d) list of impaired waters and associated pollutants and disapproved California's decisions not to list several water quality limited segments as impaired and additional associated pollutants for several others. EPA identified these additional water bodies and pollutants for inclusion on the State's 2008–2010 section 303(d) list. The waterbodies and associated pollutants are identified in Table 1 of the decision document available at the Web site link provided below.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to California's 2008–2010 section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments received, and may revise its decision if appropriate. EPA solicits public comment only on the additional waters and associated pollutants for inclusion on California's 2008–2010 Section 303(d) list.

DATES: Comments must be submitted to EPA on or before December 9, 2010.

FOR FURTHER INFORMATION CONTACT: Comments on the proposed decisions should be sent to Valentina Cabrera Stagno, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3434, facsimile (415) 947–3537, e-mail *cabrera-stagno.valentina@epa.gov.* Oral comments will not be considered. Material concerning California's 303(d) list which explain the rationale for EPA's decisions are available on EPA Region IX's Web site at *http://www.epa.gov/region9/water/tmdl/california.html* or by writing or calling Valentina Cabrera Stagno. Underlying documentation comprising the record for these decisions is available for public inspection at the above address.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards. For those waters, States are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require States to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). Consistent with EPA's regulations, EPA received California's submittal of its listing decisions under Section 303(d)(2) on October 15, 2010.

Dated: November 1, 2010.

Alexis Strauss,

Director, Water Division, Region IX.

[FR Doc. 2010–28263 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0712; FRL–9224–3]

Healthy Indoor Environment Protocols for Home Energy Upgrades

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of, and soliciting public comments for 30 days, on voluntary Healthy Indoor Environment Protocols for Home Energy Upgrades, in conjunction with the availability of the Department of Energy (DOE) Workforce Guidelines for Home Energy. The EPA protocols are intended for voluntary adoption by weatherization assistance programs, Federally funded housing programs, private sector home performance contracting organizations, and others working on residential retrofit or remodeling efforts.

DATES: Comments must be received on or before December 9, 2010.

ADDRESSES: A draft of the EPA Protocols is available for review and public comment at: *http://www.epa.gov/iaq/homes/retrofits.html.*

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0712, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments. Note, although comments on the EPA protocols can be submitted through this Federal Web site, the EPA protocols are not a Federal regulation.
- *E-mail:* to *a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2010–0712. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov.* As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Eric Werling, Indoor Environments Division, Mail Code 6609J, U.S. Environmental Protection Agency, 1200 Pennsylvania

Avenue, Washington, DC 20460; telephone number: 202–343–9495; fax number: 202–343–2394; e-mail address: *werling.eric@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the review document by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a section or page number of the review document.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

Title IV of the Superfund Amendments and Reauthorization Act of 1986 (SARA) gave EPA broad authorization to coordinate research in indoor air quality, develop and disseminate information of the subject, and coordinate efforts at the Federal, State, and local levels. The main objectives of the EPA Indoor Environments program include the protection of public health by promoting healthy environments; development and implementation of control strategies which would prevent, diagnose, abate, and mitigate indoor pollution, including the development and dissemination of guidance on those aspects of building design and construction, operation and maintenance that affect the indoor environment; and the development and dissemination of information to educate key audiences about indoor air pollution and its associated health risks, mitigation, and control strategies. Using the best science available, EPA develops and disseminates information, guidance and solution-oriented technologies and serves as a catalyst for action by guiding research, using innovative and creative risk communication tools and by building public-private partnerships.

As part of these responsibilities, EPA is developing voluntary Healthy Indoor Environment Protocols for Home Energy Upgrades. These protocols are intended for voluntary adoption by weatherization assistance programs, Federally funded housing programs, private sector home performance contracting organizations, and others working on residential energy efficiency retrofits, remodeling or other home improvement efforts. A draft is now available for review and comment. All of this information—including the draft document and additional comment-submitting instructions—can be found on the Agency's Indoor Air Quality Web site at: *http://www.epa.gov/iaq/homes/retrofits.html.*

Concurrently, in May 2009, the Vice President's Middle Class Task Force asked the White House Council on Environmental Quality (CEQ) to develop recommendations for Federal action to lay the architecture for a self-sustaining home energy efficiency retrofit industry. In response, CEQ facilitated a broad interagency process that resulted in the development of six recommendations described in detail in a report titled Recovery Through Retrofit.[1] These recommendations were carefully crafted to stimulate the growth of a vibrant, private sector-led market for residential energy efficiency retrofits. They include establishment of a uniform set of national guidelines to promote high-quality, safe and healthy energy efficiency retrofit work. DOE developed Workforce Guidelines for Home Energy Upgrades in response to this recommendation, in concert with EPA's development of Healthy Indoor Environment Protocols for Home Energy Upgrades.

Together, the DOE and EPA documents will: Provide a robust and practical set of resources for retrofit contractors, trainers, and program administrators; help improve the quality of the work performed in this expanding industry; promote occupant health and safety; and drive consumer demand for energy efficiency retrofit services. EPA encourages reviewers with broader interest in home energy retrofits to also review the DOE Workforce Guidelines, available for public comment until January 7, 2011 [*http://www.weatherization.energy.gov/retrofit_guidelines*].

A. Why is EPA developing voluntary Healthy Indoor Environment Protocols for Home Energy Upgrades?

Millions of American homes will be retrofitted in the coming years to improve energy efficiency or make them more "green." Integrated healthy home and energy efficiency retrofit activities can lower utility costs for Americans and improve indoor air quality in homes at the same time. However, there is the potential for weatherization and other energy efficiency retrofit activities to negatively impact indoor air quality and public health—if the appropriate home assessment is not made before work begins and issues that may impact indoor air quality are not appropriately addressed. These Protocols provide guidance for conducting such home assessments and also provide the specific responses necessary to maintain or improve indoor air quality in conjunction with energy efficiency retrofits or other remodeling activities.

The Protocols are intended to enhance the ability of other Federal agencies, industry standard organizations, State and local programs, and the home energy retrofit industry (*i.e.,* home weatherization, energy efficiency retrofit, and housing rehabilitation professionals) to better integrate health protections into energy focused programs. The Protocols apply to single family and multi-family low-rise residential dwellings. These Protocols provide recommended minimum specifications and additional best practices for protection of occupant health and, together with better resources for contractors, will facilitate increased home energy efficiency, improve the quality of the work performed, and reduce failures and call-backs for contractors.

[1] *http://www.whitehouse.gov/sites/default/files/Recovery_Through_Retrofit_Final_Report.pdf.*

B. Why are better health protections needed for home energy retrofits?

Low-income weatherization and private sector home performance contracting programs reduce energy bills, improve comfort, and often improve health and safety in the homes of many American families. These activities should never adversely affect a home's indoor environment, occupant health, or worker health and safety. The most urgent public health issues related to home energy retrofits, such as combustion safety, already have rigorous standards in place that are enforced through program requirements and processes. However, there are other public health issues that can be affected by home energy retrofits and remodeling work such as occupant exposure to moisture/mold, radon, and lead. These draft Healthy Indoor Environment Protocols provide guidance on how best to address these issues and the steps necessary to maintain or improve indoor air quality while making energy efficiency home improvements. Adoption of the EPA Protocols and other protective guidelines such as the DOE Workforce Guidelines will help minimize the potential unintended health impacts of retrofit and remodeling activities.

Fortunately, the expansion of the DOE's weatherization assistance program (WAP) through the American Recovery and Reinvestment Act (ARRA) of 2009, and other home energy retrofit initiatives provide unique opportunities to simultaneously improve the energy efficiency and the healthfulness of American homes. Integrated healthy home and retrofit activities can lower utility costs for Americans, while improving the indoor air quality in millions of homes. EPA is working with DOE and other programs to identify opportunities to reduce or eliminate barriers to incorporating more health protective best practices into energy efficiency retrofit programs. These protocols, when finalized will serve as a core set of practices that can be integrated into evolving program standards, training curricula and other elements of energy efficiency retrofit programs.

C. What information is included in the DRAFT protocols?

This DRAFT document includes recommended protocols for assessment of indoor environmental quality issues, recommended minimum actions, and recommended expanded actions to promote improved occupant health through home energy retrofits. Each of these is described below.

This document DOES NOT:

- Set new EPA regulatory standards;
- Provide guidance for diagnosing occupant health problems or building-related illness;
- Replace the need for training or training documents; or
- Provide detailed guidance on how to achieve the intent of each recommendation in all situations.

The document is organized to highlight priority health concerns that may relate to home energy efficiency retrofits. Priority issues are identified based on whether they are known to pose significant health risks to occupants and whether they can be affected by energy efficiency retrofit activities. For each "Priority Issue" identified in Column 1, the matrix identifies the following:

1. "Assessment Protocols" in Column 2 provide EPA-recommended assessment protocols for evaluating both existing conditions of concern and the potential for additional health concerns that may arise as a result of retrofit activities. EPA anticipates recommending adoption of the assessment protocols into weatherization and home energy retrofit assessment and audit standards and materials.

2. "Minimum Actions" in Column 3 include actions that weatherization and home energy retrofit contractors should take to ensure that the work they perform in a home does not introduce new health concerns or make existing conditions worse. These often reference existing standards. EPA anticipates recommending adoption of the minimum actions into weatherization and home energy retrofit standards and materials, and removal or modification of program rules that prohibit these recommended actions.

3. "Expanded Actions" in Column 4 include recommended indoor environment improvements that can be made during many home energy retrofit projects. The expanded actions are usually low-cost, simple improvements that can be performed by home energy retrofit workers with proper training and sufficient resources. EPA anticipates recommending incorporation of the expanded actions into weatherization assistance program and other home energy retrofit program guidance and training materials, and collaboration to help overcome barriers to these recommended healthy homes actions.

Additional resources (standards, guidelines, *etc.*) have been included for further information on each issue, including recommended assessment and performance standards, and supplemental guidance information.

In addition, EPA anticipates the need for supplemental assessment tools such as worksheets and checklists, to help assessors and contractors manage critical job information. Therefore, EPA plans to develop sample assessment tools to accompany these protocols, such as the following sample tool concepts:

- Sample Mold and Moisture Assessment Form.
- Sample Radon Testing and Assessment Form.
- Sample Home Ventilation Worksheet.

D. How is EPA recommending the protocols be used?

These protocols were developed to assist weatherization assistance programs and other home energy retrofit and remodeling programs to fill in gaps in their program standards related to indoor environment health protections, and provide additional guidance for those able to go beyond recommended minimum health protections. EPA recommends that these protocols (and supplemental tools) be voluntarily adopted in whole or in part, for the following purposes:

- To help develop or enhance standardized training program requirements.
- To help refine and update program performance standards, materials, and resources to better protect occupant health.
- To inform revisions to program funding rules (*i.e.,* change allowable expenses for health and safety as appropriate).

Specifically, EPA anticipates recommending the following for weatherization assistance and home energy retrofit programs:

1. Adoption of the assessment protocols into weatherization assistance and other home energy retrofit program assessment or audit standards,

2. Adoption of the minimum actions into weatherization assistance and other home energy retrofit program standards, and removal or modification of program rules that prohibit these recommended minimum actions,

3. Incorporation of the expanded actions into weatherization assistance and other home energy retrofit program guidance and training materials, and collaboration to help overcome barriers to these recommended healthy homes actions.

Dated: November 4, 2010.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2010–28375 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9223–9]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Advisory Council on Clean Air Compliance Analysis (Council)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Advisory Council on Clean Air Compliance Analysis (Council). The Council will discuss and finalize its draft advisory document on the EPA Office of Air and Radiation's Second Section 812 Prospective Analysis of the benefits and costs of the Clean Air Act.

DATES: The teleconference will be held on Monday, November 22, 2010 from 11 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The teleconference will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail: (202) 564–2067 or e-mail at *sanzone.stephanie@epa.gov*. General information about the Council may be found on the Council Web site at *http://www.epa.gov/advisorycouncilcaa*.

SUPPLEMENTARY INFORMATION: *Background:* Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the Advisory Council on Clean Air Compliance Analysis (Council) will hold a public meeting to discuss and approve its draft report (dated October 4, 2010) entitled, *Review of the Second Section 812 Prospective Study of the Benefits and Costs of the Clean Air Act.* The Council was established in 1991 pursuant to the Clean Air Act (CAA) Amendments of 1990 (*see* 42 U.S.C. 7612) to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a Federal Advisory Committee chartered under FACA, and complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Pursuant to Section 812 of the 1990 Clean Air Act Amendments (CAAA), EPA conducts periodic studies to assess benefits and costs of the EPA's regulatory actions under the Clean Air Act. The Council has provided advice on an EPA retrospective study published in 1997 and an EPA prospective study completed in 1999. EPA's Office of Air and Radiation (OAR) requested the Council's review of a second prospective study to evaluate the benefits and costs of EPA Clean Air programs for years 1990–2020, including a draft synthesis report and a draft summary document.

Previous Reviews: The Council and its subcommittees have previously reviewed EPA documents prepared in support of the Office of Air and Radiation's Second Section 812 Prospective Study, and the advisory reports from these activities are available on the Council Web site at (*http://www.epa.gov/advisorycouncilcaa*). As announced previously (**Federal Register,** Vol 75, Number 153, Page 48327), the Council met on September 2–3, 2010 to review a final draft of the Agency document, *Second Section 812 Prospective Study of the Benefits and Costs of the Clean Air Act* and a draft Summary Report. As a result of discussions and deliberation at the September meeting, the Council has developed a draft advisory report (dated October 4, 2010) to convey its comments and advice to the Agency on the draft EPA documents. The purpose of the November 22, 2010 teleconference is for the Council to discuss and finalize its report to the Agency on the Second Prospective Study. Background information on this advisory activity is available on the Council Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2nd%20Prospective%20812%20Study?OpenDocument.*

Technical Contacts: The Office of Air and Radiation technical contact for the Second Section 812 Benefit-Cost Analysis of the Clean Air Act is Mr. Jim DeMocker at (202) 564–1673 or *democker.jim@epa.gov*.

Availability of Meeting Materials: Draft EPA documents provided to the Council are available at *http://www.epa.gov/oar/sect812/prospective2.html* and on the Council Web Site. The meeting agenda for the November 22, 2010 teleconference and the draft Council report (dated October 4, 2010) will be posted on the Council Web site at (*http://www.epa.gov/advisorycouncilcaa*) prior to the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. Each person making an oral statement should consider providing written comments so that the points presented orally can be expanded upon in writing. Interested individuals should contact Ms. Sanzone, DFO, in writing (preferably via e-mail) at the contact information noted above by November 17, 2010, to be placed on a list of public speakers for the November 22, 2010 teleconference.

Written Statements: Written statements for the November 22, 2010 teleconference should be supplied to the DFO via e-mail at the contact information noted above, by November 17, 2010, so that the information may be made available to the SAB Committee members for their consideration and placed on the SAB Web site for public information. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Sanzone at (202) 564–2067, or via e-mail at *sanzone.stephanie@epa.gov,* preferably at least ten (10) days prior to the

meeting, to give EPA as much time as possible to process your request.

Dated: November 2, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–28265 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2010–0893, FRL–9223–8]

Ore Knob Mine Superfund Site; Jefferson, Ashe County, North Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Ore Knobe Mine Superfund Site located in Jefferson, Ashe County, North Carolina for publication.

DATES: The Agency will consider public comments on the settlement until December 9, 2010. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2010–0893 or Site name Ore Knob Mine Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm*
- E-mail. *Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: October 22, 2010.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2010–28260 Filed 11–8–10; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act; Notice of Meeting

DATE AND TIME: Wednesday, November 17, 2010, 10 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 "M" Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

Matters To Be Considered

Open Session

1. Announcement of Notation Votes, and
2. The Pressing Problem of Age Discrimination in Today's Economic Times.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *http://eeoc.gov.,* and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer at (202) 663–4070.

Dated: November 5, 2010.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 2010–28398 Filed 11–5–10; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 2, 2010.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 10, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323–E.

Form Number: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents and Responses: 2,636 respondents, 2,636 responses.

Estimated Time per Response: One hour.

Frequency of Response: On occasion, biennial, and other reporting requirements.

Total Annual Burden: 2,636.

Total Annual Cost: $1,581,600.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 308 and 310 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Each licensee/permittee of a noncommercial FM and TV broadcast station is required to file an Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323–E, within 30 days of the date of grant by the FCC of an application for an original construction permit. In addition, licensee must file FCC Form 323–E biennially on the anniversary of the application filing date for the station license renewal. Each licensee with a current, unmodified FCC Form 323–E on file with the Commission may electronically review its current Report, validate its accuracy, and be relieved of the obligation to file a new Biennial Ownership Report. The FCC 323–E must also be filed within 30 days of consummating authorized assignments or transfers of permits and licenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–28285 Filed 11–8–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of BankUnited, FSB, Coral Gables, Florida, to make any distribution to general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on November 2, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (972) 761–8677. Written correspondence may also be mailed to FDIC as Receiver of BankUnited, FSB, Attention: Claims Agent, 1601 Bryan Street, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION: On May 21, 2009, BankUnited, FSB, Coral Gables, Florida, (FIN # 10061) was closed by the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as its receiver ("Receiver"). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund (*see* 12 U.S.C. 1823(c)(4)), the FDIC facilitated a transaction with a newly chartered Federal savings bank, BankUnited, Coral Gables, Florida, to acquire most of the assets and liabilities of the failed institution.

Section 11(d)(11)(A) of the FDI Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of June 30, 2010, the value of assets available for distribution by the Receiver, together with all expected recovery sources, including recoveries on claims against directors, officers, and other professionals, claims in bankruptcy, and refunds of Federal and State taxes, was $4,321,339,716. As of the same date, administrative expenses and depositor liabilities equaled $8,120,876,686, exceeding available assets by $3,799,536,970. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: November 4, 2010.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–28226 Filed 11–8–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, November 4, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes for the Meetings of September 23 and October 7, 2010.

Draft Advisory Opinion 2010–23: CTIA—The Wireless Association by its counsel, Jan Witold Baran, Esq. and Caleb P. Burns, Esq. of Wiley Rein LLP.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Lisa Chapman, Recording Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Signed:

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–28223 Filed 11–8–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2010.

A. **Federal Reserve Bank of Dallas** (E. Ann Worthy, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Bertram BancShares, Inc.,* Bertram, Texas; to become a bank holding company by acquiring voting shares of Farmers State Bank, Bertram, Texas.

Board of Governors of the Federal Reserve System, November 4, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28249 Filed 11–8–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day 11–0307]

Proposed Data Collections Submitted for Public Comment and Recommendations; Correction

Notice: Correction

The Centers for Disease Control and Prevention published a document in the **Federal Register** concerning an information collection request. The document contained two incorrect numbers.

FOR FURTHER INFORMATION CONTACT: Carol Walker, 404–639–5960.

Correction

In the **Federal Register** of November 2, 2011, Volume 75, Number 211, in FR Doc. fr02no10–59 page 67366, under the agency name correct the last sentence in the **Federal Register** notice to read: The total annual burden is estimated to be 8,628, and in the burden table: Laboratory Form 2 to read 1,452 responses per respondent.

Dated: November 3, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–28276 Filed 11–8–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8042–N]

RIN 0938–AP81

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2011. In addition, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2011 are $230.70 for aged enrollees and $266.30 for disabled enrollees. The standard monthly Part B premium rate for 2011 is $115.40, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2010 standard premium rate was $110.50.) The Part B deductible for 2011 is $162.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met by payments from the Supplementary Medical Insurance Fund.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110.00, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2011 Part B deductible is calculated by multiplying the 2010 deductible by the ratio of the 2011 aged actuarial rate over the 2010 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the

same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 9–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered "post-institutional" are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known as the Medicare Modernization Act, or MMA), which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on their annual income. Specifically, if a beneficiary's "modified adjusted gross income" is greater than the legislated threshold amounts (for 2011, $85,000 for a beneficiary filing an individual income tax return, and $170,000 for a beneficiary filing a joint tax return) the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25 percent premium, these beneficiaries will now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, or 80 percent of the estimated total cost of Part B coverage, rather than 25 percent. The end result of the higher premium is that the Part B premium subsidy is reduced and less general revenue financing is required for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-year transition to full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2007, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates.

A further provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act, referred to as the "hold-harmless" provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the

respective month's section 202 or 223 benefits. The "hold-harmless" provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of the following—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2011 are $230.70 for enrollees age 65 and over and $266.30 for disabled enrollees under age 65. Section II.B. of this notice below, presents the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for 2011 is $115.40. The Part B annual deductible for 2011 is $162.00. Listed below are the 2011 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$115.40
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	46.10	161.50
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	115.30	230.70
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	184.50	299.90
Greater than $214,000	Greater than $428,000	253.70	369.10

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$115.40
Greater than $85,000 and less than or equal to $129,000	184.50	299.90
Greater than $129,000	253.70	369.10

The Part B annual deductible for 2011 is $162.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2011

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid,

expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year, and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2009 and 2010.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (millions)	Liabilities (millions)	Assets less liabilities (millions)
December 31, 2009	$75,545	$12,581	$62,964
December 31, 2010	62,065	14,902	47,163

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits; and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2011 is determined by first establishing per-enrollee cost by type of service from program data through 2009 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2008 through December 31, 2011 are shown in Table 2.

As indicated in Table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2011 is $191.24. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. The monthly actuarial rate of $230.70 provides an adjustment of $41.22 for a contingency margin and −$1.76 for interest earnings.

The size of the contingency margin for 2011 is affected by several factors. The first, and largest, factor involves the current law formula for physician fees, which will result in a reduction in physician fees of 23 percent in December 2010 and is projected to result in a reduction of about 6.5 percent in January 2011. For each year from 2003 through November 2010, Congress has acted to prevent physician fee reductions from occurring. In recognition of the strong possibility of substantial increases in Part B expenditures that would result from similar legislation to override the decreases in physician fees in 2010 and 2011, it is appropriate to maintain a significantly larger Part B contingency reserve than would otherwise be necessary. The asset level projected for the end of 2010 is not adequate to accommodate this contingency.

The second factor also has a large impact on the level of the contingency reserve. As noted previously, for most Part B beneficiaries the hold-harmless provision prevents their benefits under Section 202 or 223 of the Act from decreasing as a result of an increase in the Part B premium. The increase in the benefits under Section 202 and 223 of the Act was 0 percent in 2010, and could be 0 percent for 2012. As a result, the increase in the Part B premium for 2010 (the $14.10 increase from the 2009 standard monthly premium of $96.40 to the 2010 standard monthly premium of $110.50) was paid by only a small percentage of Part B enrollees. Similarly, the increase in the Part B premium for 2011 will be paid by only a small percentage of Part B enrollees. (Approximately 27 percent of beneficiaries are not subject to the hold-harmless provision because they are subject to the income-related additional premium amount (5 percent); they are new enrollees during the year (3 percent); or they do not have their Part B premiums withheld from social security benefit payments (19 percent), including those who qualify for both Medicare and Medicaid and have their Part B premiums paid on their behalf by Medicaid (17 percent).) In order for Part B to be adequately funded in 2011, the 2011 contingency margin has been increased to account for this situation. However, the result is a larger-than-usual premium paid by or on behalf of a minority of Part B enrollees.

Two other, smaller factors affect the contingency margin for 2011. Starting in 2011, manufacturers and importers of brand-name prescription drugs will pay a fee that is allocated to the Part B account of the SMI trust. For 2011, the total of these brand-name drug fees will be $2.5 billion. The contingency margin has been reduced to account for this additional revenue.

Another small factor impacting the contingency margin comes from the requirement that certain payment incentives, to encourage the development and use of health information technology (HIT) by Medicare physicians, are to be excluded from the premium determination. HIT bonuses or penalties will be directly offset through transfers with the general fund of the Treasury. The monthly actuarial rate includes an adjustment of −$1.05 for HIT bonus payments in 2011.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. Within this range, 17 percent has been the normal target. In view of the strong likelihood of actual expenditures exceeding estimated levels, due to the enactment of legislation after the financing has been set for a given year, a contingency reserve ratio in excess of 20 percent of the following year's expenditures would better ensure that the assets of the Part B account can adequately cover the cost of incurred-but-not-reported benefits

together with variations between actual and estimated cost levels.

The actuarial rate of $230.70 per month for aged beneficiaries, as announced in this notice for 2011, reflects the combined net effect of the factors described above and the projection assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (*see* Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2011 is $228.22. The monthly actuarial rate of $266.30 also provides an adjustment of −$2.39 for interest earnings and $40.47 for a contingency margin, reflecting the same factors described above for the aged actuarial rate. Based on current estimates, the assets associated with the disabled Medicare beneficiaries are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a large contingency margin is needed to increase assets to an appropriate level.

The actuarial rate of $266.30 per month for disabled beneficiaries, as announced in this notice for 2011, reflects the combined net effect of the factors described above for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $64,247 million by the end of December 2011 under the assumptions used in preparing this report. This amounts to 28.5 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $52,472 million by the end of December 2011, which amounts to 21.0 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $73,097 million by the end of December 2011, or 35.8 percent of the estimated total incurred expenditures for the following year.

The above analysis indicates that the premium and general revenue financing established for 2011, together with existing Part B account assets would be adequate to cover estimated Part B costs for 2011 under current law, even if actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, listed below are the 2011 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$115.40
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	46.10	161.50
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	115.30	230.70
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	184.50	299.90
Greater than $214,000	Greater than $428,000	253.70	369.10

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$115.40
Greater than $85,000 and less than or equal to $129,000	184.50	299.90
Greater than $129,000	253.70	369.10

TABLE 2—PROJECTION FACTORS[1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2008–2011
[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Outpatient hospital	Home health agency	Hospital lab[6]	Other inter-mediary services[7]	Managed care
	Fees[2]	Residual[3]								
Aged:										
2008	0.4	3.3	7.1	7.3	4.2	6.4	12.3	4.3	6.1	5.4
2009	1.6	2.4	−9.0	9.7	4.6	10.1	10.4	10.1	10.2	0.3
2010	1.2	5.0	5.8	6.0	3.8	6.6	1.6	1.9	5.8	−1.8
2011	−26.0	9.9	2.9	−0.1	4.5	6.2	−0.8	−2.4	−3.1	0.7
Disabled:										
2008	0.4	3.2	7.4	11.6	8.8	7.7	14.3	5.9	6.9	5.9
2009	1.6	6.7	−2.4	23.5	8.2	12.3	10.5	13.0	18.3	0.5
2010	1.2	5.2	5.6	7.9	3.9	6.8	3.2	1.7	9.1	−1.5
2011	−26.0	9.9	3.2	−0.2	4.3	6.1	−0.7	−2.4	−0.3	0.9

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, *etc.*
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, *etc.*

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2008 THROUGH DECEMBER 31, 2011

	Financing periods			
	CY 2008	CY 2009	CY 2010	CY 2011
Covered services (at level recognized):				
Physician fee schedule	78.35	79.29	83.37	67.42
Durable medical equipment	9.95	8.80	9.21	9.43
Carrier lab[1]	4.09	4.36	4.58	4.55
Other carrier services[2]	19.81	20.15	20.67	21.48
Outpatient hospital	30.70	32.86	34.63	36.60
Home health	10.64	11.42	11.48	11.33
Hospital lab[3]	2.78	2.98	3.00	2.91
Other intermediary services[4]	13.30	14.25	14.91	14.37
Managed care	49.90	54.19	54.77	55.87
Total services	219.53	228.30	236.60	223.97
Cost sharing:				
Deductible	−5.50	−5.50	−6.32	−6.61
Coinsurance	−30.21	−30.42	−31.22	−27.82
HIT payment incentives	0.00	0.00	0.00	−1.05
Total benefits	183.82	192.37	199.06	188.49
Administrative expenses	2.93	2.98	3.44	2.75
Incurred expenditures	186.75	195.35	202.50	191.24
Value of interest	−3.34	−2.80	−2.47	−1.76
Contingency margin for projection error and to amortize the surplus or deficit	9.29	0.14	20.97	41.22
Monthly actuarial rate	192.70	192.70	221.00	230.70

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, *etc.*
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, and rehabilitation and psychiatric hospitals, *etc.*

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2008 THROUGH DECEMBER 31, 2011

	Financing Periods			
	CY 2008	CY 2009	CY 2010	CY 2011
Covered services (at level recognized):				
Physician fee schedule	78.89	83.25	88.30	72.86
Durable medical equipment	17.59	16.67	17.53	18.38
Carrier lab[1]	5.35	6.24	6.68	6.76
Other carrier services[2]	24.29	25.64	26.52	28.06

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2008 THROUGH DECEMBER 31, 2011—Continued

	Financing Periods			
	CY 2008	CY 2009	CY 2010	CY 2011
Outpatient hospital	41.73	45.70	48.63	52.43
Home health	9.10	9.81	10.09	10.21
Hospital lab [3]	4.42	4.85	4.91	4.86
Other intermediary services [4]	40.34	42.60	44.35	45.12
Managed care	36.46	40.55	40.23	37.80
Total services	258.18	275.31	287.23	276.46
Cost sharing:				
Deductible	−5.14	−5.15	−5.92	−6.18
Coinsurance	−43.88	−45.90	−47.26	−44.23
HIT payment incentives	0.00	0.00	0.00	−1.11
Total benefits	209.15	224.26	234.05	224.94
Administrative expenses	3.33	3.47	3.70	3.28
Incurred expenditures	212.49	227.73	237.75	228.22
Value of interest	−4.26	−3.33	−2.91	−2.39
Contingency margin for projection error and to amortize the surplus or deficit	1.47	−0.19	35.56	40.47
Monthly actuarial rate	209.70	224.20	224.20	266.30

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, *etc.*
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, *etc.*

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2011

As of December 31,	2009	2010	2011
This projection:			
Actuarial status (in millions):			
Assets	75,545	62,065	78,995
Liabilities	12,581	14,902	14,721
Assets less liabilities	62,964	47,163	64,274
Ratio (in percent) [1]	28.7	22.1	28.5
Low cost projection:			
Actuarial status (in millions):			
Assets	75,545	62,065	87,001
Liabilities	12,581	14,379	13,904
Assets less liabilities	62,964	47,686	73,097
Ratio (in percent) [1]	29.4	23.9	35.8
High cost projection:			
Actuarial status (in millions):			
Assets	75,545	62,065	68,305
Liabilities	12,581	15,436	15,833
Assets less liabilities	62,964	46,628	52,472
Ratio (in percent) [1]	28.0	20.3	21.0

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

III. Regulatory Impact Analysis

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 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 (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 one year).

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). 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).

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 $6.7 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. This notice will not have a significant impact on a substantial number of small businesses or other small entities. Therefore, the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

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 Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 has no consequential effect on State, local, or Tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2011 are $230.70 for enrollees age 65 and over and $266.30 for disabled enrollees under age 65. It also announces the 2011 monthly Part B premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with a dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$115.40
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	46.10	161.50
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	115.30	230.70
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	184.50	299.90
Greater than $214,000	Greater than $428,000	253.70	369.10

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are also announced and listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$115.40
Greater than $85,000 and less than or equal to $129,000	184.50	299.90
Greater than $129,000	253.70	369.10

The standard Part B premium rate of $115.40 is $4.90 higher than the premium for 2010, so there will be about $700 million of additional costs in 2011 to the approximately 12 million Part B enrollees who pay the increase in the Part B premium. Therefore, this notice is a major rule as defined in 5 U.S.C. 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or

practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. The statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Moreover, we find that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 27, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 29, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–28248 Filed 11–4–10; 2:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8041–N]

RIN 0938–AP85

Medicare Program; Part A Premiums for CY 2011 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2011. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the "uninsured aged") and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2011 for these individuals will be $450. The reduced premium for certain other individuals as described in this notice will be $248.

DATES: *Effective Date:* This notice is effective on January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance Program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Medicare Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium of certain disabled individuals who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, but are no longer entitled to disability benefits and free Medicare Part A coverage because they have gone back to work and their earnings exceed the statutorily defined "substantial gainful activity" amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the following calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A of the Act). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2011 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for CY 2011

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2011, is $450.

The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $248.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2011 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2011 on— (1) current historical data; and (2) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2011 Budget.

We estimate that in CY 2011, 39,315,092 people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur about $212.435 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $450.28 and the monthly premium is $450. The full monthly premium reduced by 45 percent is $248.

IV. Costs to Beneficiaries

The CY 2011 premium of $450 is approximately 2 percent lower than the CY 2010 premium of $461.

We estimate that approximately 571,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 40,000 enrollees will pay the reduced premium. We estimate that the aggregate savings to enrollees paying these premiums in CY 2011, compared to the amount that they paid in CY 2010, will be about $78 million.

V. Waiver of Proposed Notice and Comment Period

We are not using notice and comment rulemaking in this notification of Medicare Part A premiums for CY 2011 as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act (APA) permits agencies to waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. 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).

VII. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 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 (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). As stated in section IV of this notice, we estimate that the overall effect of these changes in the Part A premium will be a savings to voluntary enrollees (section 1818 and section 1818A of the Act) of about $78 million. Therefore, this notice is a not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

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 government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis under the RFA.

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 Metropolitan Statistical Area and has fewer than 100 beds. The Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 has no consequential effect on State, local, or tribal governments or on the private sector. However, States are required to pay the premiums for dually-eligible beneficiaries.

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. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 9, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 29, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–28250 Filed 11–4–10; 2:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8040–N]

RIN 0938–AP86

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2011 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2011, the inpatient hospital

deductible will be $1132. The daily coinsurance amounts for CY 2011 will be—(a) $283 for the 61st through 90th day of hospitalization in a benefit period; (b) $566 for lifetime reserve days; and (c) $141.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: *Effective Date:* This notice is effective on January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390 for general information. Gregory J. Savord, (410) 786–1521 for case-mix analysis.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following CY.

II. Computing the Inpatient Hospital Deductible for CY 2011

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2011 for hospitals paid under the inpatient prospective payment system is the market basket percentage increase, otherwise known as the market basket update, reduced by .25 percentage points. Under section 1886(b)(3)(B)(viii) of the Act, hospitals will receive this update only if they submit quality data as specified by the Secretary. The update for hospitals that do not submit this data is reduced by 2.0 percentage points. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will remain the same.

Under section 1886(b)(3)(B)(ii)(VIII) of the Act, the percentage increase used to update the payment rates for FY 2011 for hospitals excluded from the inpatient prospective payment system is the market basket percentage increase reduced by .5 percentage points for Long Term Care Hospitals and reduced by .25 percentage points for Inpatient Rehabilitation facilities and Psychiatric Hospitals, defined according to section 1886(b)(3)(B)(iii) of the Act.

The market basket percentage increase for 2011 is 2.6 percent, as announced in the final rule with comment period published in the **Federal Register** on August 16, 2010 entitled, "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2011 Rates; and Changes to the Long-Term Care Hospital Prospective Payment System and Rate Years 2011 and 2010 Rates (IPPS/RY 2011 LTCH PPS) (75 FR 50042–50677)." Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system is 2.35 percent. The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 2.73 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2011 is 2.40 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated for each hospital an average case-mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2010 compared to FY 2009. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2010. These bills represent a total of about 8.5 million Medicare discharges for FY 2010 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2010 is 0.3 percent. Based on these bills and past experience, we expect the overall case mix change to be 0.5 percent as the year progresses and more FY 2010 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. In the FY 2011 IPPS/RY 2011 LTCH PPS final rule with comment period, we indicated that we believe the adoption of the Medicare severity-based diagnosis-related groups (MS–DRGs) led to increases in aggregate payments without a corresponding increase in actual patient severity of illness due to the incentives for improved documentation and coding. In that final rule with comment period, we estimated that changes in coding or classification that do not reflect real change in case-mix would be 0.0 percent for FY 2010. Therefore, since we are expecting overall case mix to increase by 0.5 percent and 0.0 percent of that to be caused by coding changes, real case mix changes resulted in an increase of 0.5 percent for FY 2010.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.40 percent, and the real case-mix adjustment factor for the deductible is 0.5 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in CY 2011 is $1132. This deductible amount is determined by multiplying $1100 (the inpatient hospital deductible for CY 2010) by the payment-weighted average increase in the payment rates of 1.0240 multiplied by the increase in real case-mix of 1.005, which equals $1132.03 and is rounded to $1132.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2011

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2011, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $283 (one-fourth of the inpatient hospital deductible); the daily

coinsurance for lifetime reserve days will be $566 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $141.50 (one-eighth of the inpatient hospital deductible).

IV. Cost to Medicare Beneficiaries

Table 1 below summarizes the deductible and coinsurance amounts for CYs 2010 and 2011, as well as the number of each that is estimated to be paid.

TABLE 1—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2010 AND 2011

Type of cost sharing	Value		Number paid (in millions)	
	2010	2011	2010	2011
Inpatient hospital deductible	$1100	$1132	8.40	8.59
Daily coinsurance for 61st–90th Day	$275	$283	2.25	2.30
Daily coinsurance for lifetime reserve days	$550	$566	1.13	1.16
SNF coinsurance	$137.50	$141.50	42.41	43.66

The estimated total increase in costs to beneficiaries is about $900 million (rounded to the nearest $10 million) due to— (1) the increase in the deductible and coinsurance amounts; and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each CY. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. 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).

VII. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 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 (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). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $900 million due to— (1) The increase in the deductible and coinsurance amounts; and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2), and is an economically significant rule under Executive Order 12866.

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 government agencies. 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 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis under the RFA.

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 Metropolitan Statistical Area and has fewer than 100 beds. The Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 has no consequential effect on State, local, or Tribal governments or on the private sector. However, States may be required

to pay the deductibles and coinsurance for dually-eligible beneficiaries.

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. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 9, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 29, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–28251 Filed 11–4–10; 2:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Secretary's Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Secretary's Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: January 27, 2011, 8:30 a.m. to 5 p.m. January 28, 2011, 8:30 a.m. to 3:30 p.m.

Place: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Status: The meeting will be open to the public with attendance limited to space availability. Participants are asked to register for the meeting by going to the registration Web site at *http://altarum.cvent.com/event/SACHDNC012011.* The registration deadline is Tuesday, January 25, 2011. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations should indicate their needs on the registration Web site. The deadline for special accommodation requests is Friday, January 21, 2011. If there are technical problems gaining access to the Web site, please contact Maureen Ball, Meetings Coordinator at *conferences@altarum.org.*

Purpose: The Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (Advisory Committee) was established to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. The Advisory Committee also provides advice and recommendations concerning the grants and projects authorized under the Public Health Service Act, 42 U.S.C. 300b–10, (Heritable Disorders Program) as amended in the Newborn Screening Saves Lives Act of 2008.

Agenda: The meeting will include: (1) Presentations from the following Advisory Committee workgroups: Communications, Health Information Technology, and Evidence Review; (2) a report from a National Survey of Recent and Prospective Mothers about Newborn Screening; and (3) presentations on the continued work and reports of the Advisory Committee's subcommittees on laboratory standards and procedures, follow-up and treatment, and education and training. Proposed Agenda items are subject to change as priorities dictate. You can locate the Agenda, Committee Roster and Charter, presentations, and meeting materials at the home page of the Advisory Committee's Web site at *http://www.hrsa.gov/heritabledisorderscommittee/.*

Public Comments: Members of the public can present oral comments during the public comment periods of the meeting, which are scheduled for both days of the meeting. Those individuals who want to make a comment are requested to register online by Tuesday, January 25, 2011, at *http://altarum.cvent.com/event/SACHDNC012011.* Requests will contain the name, address, telephone number, and any professional or business affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The list of public comment participants will be posted on the Web site. Written comments should be e-mailed via e-mail no later than Tuesday, January 25, 2011, for consideration. Comments should be submitted to Maureen Ball, Meetings Coordinator, Conference and Meetings Management, Altarum Institute, 1200 18th Street, NW., Suite 700, Washington, DC 20036, *telephone:* 202 828–5100; *fax:* 202 785–3083, or *e-mail: conferences@altarum.org.*

Contact Person: Anyone interested in obtaining other relevant information should write or contact Alaina M. Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0721, *aharris@hrsa.gov.* More information on the Advisory Committee is available at *http://mchb.hrsa.gov/heritabledisorderscommittee.*

Dated: November 2, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–28188 Filed 11–8–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0369]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: Under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), the Food and Drug Administration (FDA) is required to report annually in the **Federal Register** on the status of postmarketing requirements and commitments required of, or agreed upon by, holders of approved drug and biological products. This notice is the Agency's report on the status of the studies and clinical trials that applicants have agreed to or are required to conduct.

FOR FURTHER INFORMATION CONTACT: Cathryn C. Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6464, Silver Spring, MD 20993–0002, 301–796–0700; or

Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1400 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Modernization Act

Section 130(a) of the Modernization Act (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a new provision requiring reports of certain postmarketing studies, including clinical trials, for human drug and biological products (section 506B of the FD&C Act (21 U.S.C. 356b)). Section 506B of the FD&C Act provides FDA with additional authority to monitor the progress of a postmarketing study or clinical trial that an applicant has been required to or has agreed to conduct by requiring the applicant to submit a report annually providing information

on the status of the postmarketing study/clinical trial. This report must also include reasons, if any, for failure to complete the study/clinical trial. These studies and clinical trials are intended to further define the safety, efficacy, or optimal use of a product and therefore play a vital role in fully characterizing the product.

Under the Modernization Act, commitments to conduct postmarketing studies or clinical trials included both studies/clinical trials that applicants agreed to conduct as well as studies/clinical trials that applicants were required to conduct under FDA regulations.[1]

B. The Food and Drug Administration Amendments Act of 2007

On September 27, 2007, the President signed Public Law 110–85, the Food and Drug Administration Amendments Act of 2007 (FDAAA). Section 901, in Title IX of FDAAA, created a new section 505(o) of the FD&C Act authorizing FDA to require certain studies and clinical trials for human drug and biological products approved under section 505 of the FD&C Act or section 351 of the Public Health Service Act. Under FDAAA, FDA has been given additional authority to require applicants to conduct and report on postmarketing studies and clinical trials to assess a known serious risk, assess signals of serious risk, or identify an unexpected serious risk related to the use of a product. This new authority became effective on March 25, 2008. FDA may now take enforcement action against applicants who fail to conduct studies and clinical trials required under FDAAA, as well as studies and clinical trials required under FDA regulations (*see* sections 505(o)(1), 502(z), and 303(f)(4) of the FD&C Act; 21 U.S.C. 355(o)(1), 352(z), and 333(f)(4)).

Although regulations implementing the Modernization Act postmarketing authorities use the term "postmarketing commitment" to refer to both required studies and studies applicants agree to conduct, in light of the new authorities enacted in FDAAA, FDA has decided it is important to distinguish between enforceable postmarketing requirements and unenforceable postmarketing commitments. Therefore, in this notice and report, FDA refers to studies/clinical trials that an applicant is required to conduct as "postmarketing requirements" (PMRs) and studies/clinical trials that an applicant agrees to but is not required to conduct as "postmarketing commitments" (PMCs). Both are addressed in this notice and report.

C. FDA's Implementing Regulations

On October 30, 2000 (65 FR 64607), FDA published a final rule implementing section 130 of the Modernization Act. This rule modified the annual report requirements for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) by revising § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLAs) by establishing § 601.70 (21 CFR 601.70). The rule described the content and format of the annual progress report, and clarified the scope of the reporting requirement and the timing for submission of the annual progress reports. The rule became effective on April 30, 2001. The regulations apply only to human drug and biological products that are approved under NDAs, ANDAs, and BLAs. They do not apply to animal drugs or to biological products regulated under the medical device authorities.

The reporting requirements under §§ 314.81(b)(2)(vii) and 601.70 apply to PMRs and PMCs made on or before the enactment of the Modernization Act (November 21, 1997), as well as those made after that date. Therefore, studies and clinical trials required under FDAAA are covered by the reporting requirements in these regulations.

Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drug and biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study/clinical trial that is required by FDA or that they have committed to conduct either at the time of approval or after approval of their NDA, ANDA, or BLA. The status of PMCs concerning chemistry, manufacturing, and production controls and the status of other studies/clinical trials conducted on an applicant's own initiative are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii). Furthermore, section 505(o)(3)(E) of the FD&C Act as amended by FDAAA requires that applicants report periodically on the status of each required study/clinical trial and each study/clinical trial "otherwise undertaken * * * to investigate a safety issue * * *."

According to the regulations, once a PMR has been required or a PMC has been agreed upon, an applicant must report on the progress of the PMR/PMC on the anniversary of the product's approval until the PMR/PMC is completed or terminated and FDA determines that the PMR/PMC has been fulfilled or that the PMR/PMC is either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the PMR/PMC, a schedule for completing the PMR/PMC, and a characterization of the current status of the PMR/PMC. The report must also provide an explanation of the PMR/PMC status by describing briefly the progress of the PMR/PMC. A PMR/PMC schedule is expected to include the actual or projected dates for the following: (1) Submission of the final protocol to FDA, (2) completion of the study/clinical trial, and (3) submission of the final report to FDA. The status of the PMR/PMC must be described in the annual report according to the following definitions:

- *Pending:* The study/clinical trial has not been initiated (*i.e.,* no subjects have been enrolled or animals dosed), but does not meet the criteria for delayed (*i.e.,* the original projected date for initiation of subject accrual or initiation of animal dosing has not passed);
- *Ongoing:* The study/clinical trial is proceeding according to or ahead of the original schedule;
- *Delayed:* The study/clinical trial is behind the original schedule;
- *Terminated:* The study/clinical trial was ended before completion, but a final report has not been submitted to FDA; or
- *Submitted:* The study/clinical trial has been completed or terminated, and a final report has been submitted to FDA.

Databases containing information on PMRs/PMCs are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

II. Summary of Information From Postmarketing Status Reports

This report, published to fulfill the annual reporting requirement under the Modernization Act, summarizes the

[1] Before passage of FDAAA, FDA could require postmarketing studies and clinical trials under the following circumstances: To verify and describe clinical benefit for a human drug approved in accordance with the accelerated approval provisions in section 506(b)(2)(A) of the FD&C Act (21 U.S.C. 356(b)(2)(A); 21 CFR 314.510 and 601.41); for a drug approved on the basis of animal efficacy data because human efficacy trials are not ethical or feasible (21 CFR 314.610(b)(1) and 601.91(b)(1)); and for marketed drugs that are not adequately labeled for children under section 505B of the FD&C Act (Pediatric Research Equity Act (21 U.S.C. 355c; Public Law 108–155)).

status of PMRs and PMCs as of September 30, 2009. If a requirement or commitment did not have a schedule, or a postmarketing progress report was not received in the previous 12 months, the PMR/PMC is categorized according to the most recent information available to the Agency.[2]

Information in this report covers any PMR/PMC that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including PMRs required under FDAAA (section 505(o)(3) of the FD&C Act), PMRs required under FDA regulations (*e.g.,* PMRs required to demonstrate clinical benefit of a product following accelerated approval (see footnote 1 of this document)), and PMCs agreed to by the applicant.

Information summarized in this report includes the following: (1) The number of applicants with open (uncompleted) PMRs/PMCs, (2) the number of open PMRs/PMCs, (3) the status of open PMRs/PMCs as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports, (4) the status of concluded PMRs/PMCs as determined by FDA, and (5) the number of applications with open PMRs/PMCs for which applicants did not submit an annual report within 60 days of the anniversary date of U.S. approval.

Additional information about PMRs/PMCs submitted by applicants to CDER and CBER is provided on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/default.htm.* Neither the Web site nor this notice include information about PMCs concerning chemistry, manufacturing, and controls. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. Numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site because this notice incorporates totals for all PMRs/PMCs in FDA databases, including PMRs/PMCs undergoing review for accuracy. In addition, the report in this notice will be updated annually while the Web site is updated quarterly (*i.e.,* in January, April, July, and October).

Many applicants have more than one approved product and for many products there is more than one PMR or PMC. Specifically, there were 163 unique applicants with 242 NDAs/ANDAs that had open PMRs/PMCs. There were 59 unique applicants with 91 BLAs that had open PMRs/PMCs.

Annual status reports are required to be submitted for each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application. In fiscal year 2009 (FY09), 25 percent (48/193) of NDA/ANDA and 34 percent (31/91) of BLA annual status reports were not submitted within 60 days of the anniversary date of U.S. approval of the original application. Of the annual status reports due but not submitted on time, 100 percent of the NDA/ANDA and 45 percent (14/31) of the BLA reports were submitted before the close of FY09 (September 30, 2009).

Most PMRs are progressing on schedule (91.5 percent for NDAs/ANDAs; 92 percent for BLAs). Most PMCs are also progressing on schedule (89 percent for NDAs/ANDAs; 75 percent for BLAs). Most of the PMCs that are currently listed in the database were developed before the postmarketing requirements section of FDAAA took effect.[3]

III. About This Report

This report provides six separate summary tables. The tables distinguish between PMRs and PMCs and between on-schedule and off-schedule PMRs and PMCs according to the original schedule milestones. On-schedule PMRs/PMCs are categorized as pending, ongoing, or submitted. Off-schedule PMRs/PMCs that have missed one of the original milestone dates are categorized as delayed or terminated. The tables include data as of September 30, 2009.

Table 1 of this document provides an overall summary of the data on all PMRs and PMCs. Tables 2 and 3 of this document provide detail on PMRs. Table 2 provides additional detail on the status of on-schedule PMRs.

Table 1 shows that most PMRs (91.5 percent for NDAs/ANDAs and 92 percent for BLAs) and most PMCs (89 percent for NDAs/ANDAs and 75 percent for BLAs) are on schedule. Overall, of the PMRs that are pending (*i.e.,* have not been initiated), 83 percent were created within the past 3 years. Table 2 shows that 62 percent of pending PMRs for drug and biological products are in response to the Pediatric Research and Equity Act (PREA), under which FDA requires sponsors to study new drugs, when appropriate, for pediatric populations. Under section 505B(a)(3) of the FD&C Act, the initiation of these studies generally is deferred until required safety information from other studies has first been submitted and reviewed. PMRs for products approved under the animal efficacy rule (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products) can be conducted only when the product is used for its indication as a counterterrorism measure. In the absence of a public health emergency, these studies/clinical trials will remain pending indefinitely. The next largest category of pending PMRs for drug and biological products (35 percent) comprises those studies/clinical trials required by FDA under FDAAA, which became effective on March 25, 2008.

Table 3 provides additional detail on the status of off-schedule PMRs. The majority of off-schedule PMRs (which account for 8.5 percent of the total for NDAs/ANDAs and 9 percent for BLAs) are delayed according to the original schedule milestones (94 percent (31/33) for NDAs/ANDAs; 88 percent (7/8) for BLAs). In certain situations, the original schedules may have been adjusted for unanticipated delays in the progress of the study/clinical trial (*e.g.,* difficulties with subject enrollment in a trial for a marketed drug or need for additional time to analyze results). In this report, study/clinical trial status reflects the status in relation to the original study/clinical trial schedule regardless of whether FDA has acknowledged that additional time may be required to complete the study/clinical trial.

Tables 4 and 5 of this document provide additional detail on the status of PMCs. Table 4 provides additional detail on the status of on-schedule PMCs. Pending PMCs comprise 52 percent (449/867) of the on-schedule NDA and ANDA PMCs and 34 percent (82/244) of the on-schedule BLA PMCs.

Table 5 provides additional details on the status of off-schedule PMCs. The majority of off-schedule PMCs (which account for 11 percent for NDAs/ANDAs and 25 percent for BLAs) are delayed according to the original schedule milestones (90 percent (100/111) for NDAs/ANDAs; 98 percent (79/81) for BLAs). As noted above, this report reflects the original due dates for study/clinical trial results and does not reflect discussions between the Agency and the sponsor regarding studies/clinical trials that may require more time for completion.

Table 6 of this document provides details about PMRs and PMCs that were concluded in the previous year. Most concluded PMRs and PMCs were fulfilled (60 percent of NDA/ANDA PMRs and 56 percent of BLA PMRs; 79

[2] Although the data included in this report do not include a summary of reports that sponsors have failed to file by their due date, the Agency notes that it may take appropriate regulatory action in the event reports are not filed on a timely basis.

[3] There are existing PMCs established before FDAAA that might meet current FDAAA standards for required safety studies/clinical trials under section 505(o)(3)(B) of the FD&C Act (21 U.S.C. 355(o)(3)(B)). Under section 505(o)(3)(c), the Agency may convert pre-existing PMCs into PMRs if it becomes aware of new safety information.

percent of NDA/ANDA PMCs and 82 percent of BLA PMCs). Compared to FY08, in FY09 there has been a significant increase in the number of concluded PMRs and the number of concluded PMCs for drug and biological products.

TABLE 1—SUMMARY OF POSTMARKETING REQUIREMENTS AND COMMITMENTS

[Numbers as of September 30, 2009]

	NDA/ANDA (% of total PMR or % of total PMC)	>BLA (% of total PMR or % of total PMC)[1]
Number of open PMRs	405	96
On-schedule open PMRs (see table 2 of this document)	372 (91.5%)	88 (92%)
Off-schedule open PMRs (see table 3 of this document)	33 (8.5%)	8 (9%)
Number of open PMCs	978	325
On-schedule open PMCs (see table 4 of this document)	867 (89%)	244 (75%)
Off-schedule open PMCs (see table 5 of this document)	111 (11%)	81 (25%)

[1] On October 1, 2003, FDA completed a consolidation of certain therapeutic products formerly regulated by CBER into CDER. Consequently, CDER now reviews many BLAs. Fiscal year statistics for postmarketing requirements and commitments for BLAs reviewed by CDER are included in BLA totals in this table.

TABLE 2—SUMMARY OF ON-SCHEDULE POSTMARKETING REQUIREMENTS

[Numbers as of September 30, 2009]

On-schedule open PMRs	NDA/ANDA (% of total PMR	BLA (% of total PMR)[1]
Pending (by type):		
Accelerated approval	6	4
PREA[2]	185	26
Animal efficacy[3]	2	0
FDAAA safety (since March 25, 2008)	85	35
Total	278 (68.5%)	65 (68%)
Ongoing:		
Accelerated approval	16	5
PREA[2]	23	5
Animal efficacy[3]	0	0
FDAAA safety (since March 25, 2008)	19	9
Total	58 (14%)	19 (20%)
Submitted:		
Accelerated approval	8	0
PREA[2]	23	4
Animal efficacy[3]	0	0
FDAAA safety (since March 25, 2008)	5	0
Total	36 (9%)	4 (4%)
Combined total	372 (91.5%)	88 (92%)

[1] *See* note 1 for table 1 of this document.

[2] Many PREA studies have a pending status. PREA studies are usually deferred because the product is ready for approval in adults. Initiation of these studies also may be deferred until additional safety information from other studies has first been submitted and reviewed.

[3] PMRs for products approved under the animal efficacy rule (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products) can be conducted only when the product is used for its indication as a counterterrorism measure. In the absence of a public health emergency, these studies/clinical trials will remain pending indefinitely.

TABLE 3—SUMMARY OF OFF-SCHEDULE POSTMARKETING REQUIREMENTS

[Numbers as of September 30, 2009]

Off-schedule open PMRs	NDA/ANDA (% of total PMR)	BLA (% of total PMR)[1]
Delayed		
Accelerated approval	3	2
PREA	28	5
Animal efficacy	0	0
FDAAA safety (since March 25, 2008)	0	0
Total	31 (8%)	7 (12%)
Terminated	2 (0.5%)	1 (1%)

TABLE 3—SUMMARY OF OFF-SCHEDULE POSTMARKETING REQUIREMENTS—Continued

[Numbers as of September 30, 2009]

Off-schedule open PMRs	NDA/ANDA (% of total PMR)	BLA (% of total PMR) [1]
Combined total	33 (8.5%)	8 (9%)

[1] *See* note 1 for table 1 of this document.

TABLE 4—SUMMARY OF ON-SCHEDULE POSTMARKETING COMMITMENTS

[Numbers as of September 30, 2009]

On-Schedule Open PMCs	NDA/ANDA (% of total PMC)	BLA (% of total PMC) [1]
Pending	449 (46%)	82 (25%)
Ongoing	147 (15%)	84 (26%)
Submitted	271 (28%)	78 (24%)
Combined total	867 (89%)	244 (75%)

[1] *See* note 1 for table 1 of this document.

TABLE 5—SUMMARY OF OFF-SCHEDULE POSTMARKETING COMMITMENTS

[Numbers as of September 30, 2009]

Off-Schedule Open PMCs	NDA/ANDA (% of total PMC)	BLA (% of total PMC) [1]
Delayed	100 (10%)	79 (24%)
Terminated	11 (1%)	2 (1%)
Combined total	111 (11%)	81 (25%)

[1] *See* note 1 for table 1 of this document.

TABLE 6—SUMMARY OF CONCLUDED POSTMARKETING REQUIREMENTS AND COMMITMENTS

[October 1, 2008 to October 1, 2009]

	NDA/ANDA (% of total)	BLA (% of total) [1]
Concluded PMRs:		
Requirement met (fulfilled)	28 (60%)	5 (56%)
Requirement not met (released and new revised requirement issued)	7 (15%)	2 (22%)
Requirement no longer feasible or product withdrawn (released)	12 (25%)	2 (22%)
Total	47	9
Concluded PMCs:		
Commitment met (fulfilled)	259 (79%)	32 (82%)
Commitment not met (released and new revised requirement/commitment issued)	21 (6%)	0
Commitment no longer feasible or product withdrawn (released)	48 (15%)	7 (18%)
Total	328	39

[1] *See* note 1 for table 1 of this document.

Dated: November 3, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–28193 Filed 11–8–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 75 FR 61157–61160 dated October 4, 2010).

This notice reflects organizational changes to the Health Resources and Services Administration. Specifically, this notice updates the Office of Information Technology (RB5) functional statement to better align functional responsibility, improve the management and delivery of information technology services, improve management and

administrative efficiencies, and optimize use of available staff resources.

Chapter RB5—Office of Information Technology

Section RB5–10, Organization

Delete in its entirety and replace with the following:

The Office of Information Technology (RB5) is headed by the Chief Information Officer, who reports directly to the Chief Operating Officer (RB) who reports directly to the Administrator, Health Resources and Services Administration. The Office of Information Technology includes the following components:

(1) Office of the Director (RB5);

(2) Division of Capital Planning, Architecture and Project Management (RB52);

(3) Division of Data and Information Services (RB55);

(4) Division of Enterprise Solutions and Applications Management (RB56);

(5) Division of IT Management Support Services (RB57);

(6) Division of IT Operational Support Services (RB58); and

(7) Division of Web Support and Collaboration Services (RB59).

Section RB5–20, Functions

(1) Delete the functional statement for the Office of Information Technology (RB5) and replace in its entirety.

Office of the Director and Chief Information Officer (RB5)

The Chief Information Officer (CIO) is responsible for the organization, management, and administrative functions necessary to carry out the responsibilities of the CIO including: (1) Provides organizational development, investment control, budget formulation and execution, policy development, strategic and tactical planning, and performance monitoring; (2) provides leadership in the development, review and implementation of policies and procedures to promote improved information technology management capabilities and best practices throughout HRSA; and (3) coordinates IT workforce issues and works closely with the departmental Office of Human Resources Management on IT recruitment and training issues.

The Chief Information Security Officer (CISO), reporting to the CIO, provides leadership for, and collaborates with, Agency staff to oversee the implementation of security and privacy policy in the management of their IT systems, and plans all activities associated with Federal Information Security Management Act (FISMA) or other agency security and privacy initiatives, and also carries out the responsibilities including: (1) Implements, coordinates, and administers security and privacy programs to protect the information resources of HRSA in compliance with legislation, Executive Orders, directives of the Office of Management and Budget (OMB), or other mandated requirements *e.g.,* Presidential Decision Directive 63, OMB Circular A–130, the National Security Agency, the Privacy Act, and other Federal agencies; (2) executes the Agency's Risk Management Program, evaluates and assists with the implementation of safeguards to protect major information systems, and IT infrastructure; and (3) manages the development, implementation, and evaluation of the HRSA information technology security and privacy training program to meet the requirements as mandated by OMB Circular A–130, the Computer Security Act, and Privacy Act.

Division of Capital Planning, Architecture and Project Management (RB52)

The Division of Capital Planning, Architecture and Project Management (CPAPM) coordinates HRSA's capital planning and investment control (CPIC), Enterprise Architecture (EA) and Enterprise Project Life Cycle (EPLC) processes for Information Technology (IT) including: (1) Provides direct planning development and support to assure that IT activities support and achieve agency business planning and mission objectives; (2) coordinates the development and review of policies and procedures for IT Capital Planning and Investment Control, Earned Value Management, Enterprise Architecture, IT project management, and the EPLC methodology; (3) supports the Budget Office in its evaluation of IT initiatives, and preparation of Agency, departmental and OMB Budget Exhibits and documents; (4) works to obtain required information and analyze it as appropriate; coordinates control and evaluation review of ongoing IT projects and investments, including support to the HRSA Enterprise Governance Board (EGB) and the Technical and Business Review Board (TBRB) in conducting such reviews; (5) operates a Project Management Office to promote, mentor and monitor effective use of the EPLC; improve project management skills, communications and functional user involvement; assists with project prioritization; reduce project risk and monitors progress and budget; and (6) coordinates the Agency's Enterprise Architecture (EA) efforts with the capital planning process, ensuring the suitability and consistency of technology investments with HRSA's EA and strategic objectives, and incorporating security standards as a component of the EA process.

Division of Data and Information Services (RB55)

The Division of Data and Information Services (DIS) develops and maintains an overall data and information management strategy for HRSA that is integrated with HHS and Government-wide strategies, including: (1) Serves as HRSA's coordination center for data transparency and Open Government data initiatives; (2) provides for HRSA's data quality and ensures that data required for HRSA's enterprise information requirements are captured in appropriate enterprise applications and that necessary data repositories are built and maintained; (3) evaluates and integrates emerging technology to facilitate the translation of data and information from data repositories into electronic formats for internal and external dissemination; (4) identifies information needs across HRSA and develops approaches for meeting those needs using appropriate technologies, including development and maintenance of an enterprise reporting platform and a geospatial data warehouse; (5) enhances and expands use and utility of HRSA's data by providing basic analytic and user support, develops and maintains a range of information products for internal and external users, and demonstrates potential uses of information in supporting management decisions; (6) provides leadership and establishes policy to address legislative or regulatory requirements in its areas of responsibility; and (7) advises HRSA's Chief Information Officer (CIO) on technical and analytical support it can make available to other HRSA Bureaus and Offices, particularly in support of the HRSA Public Health Steering Committee and the HRSA Office of Planning, Analysis and Evaluation (OPAE).

Division of Enterprise Solutions and Applications Management (RB56)

The Division of Enterprise Solutions and Applications Management (ESAM) provides leadership, consultation, and IT project management services in the definition of Agency business applications architectures, the engineering of business processes, the building and deployment of applications, and the development, maintenance and management of enterprise systems and data collections efforts, including: (1) Manages the application and data architecture definition, controlling software

configuration management, data modeling, database design, development, management and stewardship services for enterprise and small system business process owners; (2) manages the systems development lifecycle by facilitating business process engineering efforts, systems requirements definition, and provides oversight for application change management control; (3) provides enterprise application user training, Tier-3 assistance, and is responsible for end-to-end application building, deployment, maintenance and data security assurance; (4) defines the Agency business applications architecture, engineers technology for business processes, builds, deploys, maintains and manages enterprise systems and data collections efforts; (5) applies business applications architecture to process specific systems; (6) builds, deploys, maintains and manages organization specific systems and unique data collection efforts; and (7) directs database maintenance, modification, security, and management services for system process owners.

Division of IT Management Support Services (RB57)

The Division of IT Management Support Services (ITMSS) represents the CIO and other OIT divisions on IT policy and other administrative and IT management issues, including: (1) Collects customer feedback from the programmatic and business areas of the Agency and provides a central point for a variety of IT management and support functions; (2) provides oversight and management of budget formulation and execution; (3) serves as the focal point to HRSA contracts and provides centralized procurement services for the Office of Information Technology; (4) serves as the coordinator for Inter-agency and Service Level Agreements; (5) oversees the acquisition of HRSA IT hardware, wireless communication devices, and software licenses; (6) accountable for property life cycle management and tracking of Agency-wide IT capital equipment; (7) provides oversight for outsourced network and desktop services to staff in HRSA Regional Offices (ROs); (8) provides telecommunications accountability, oversight, and support; and (9) serves as the focal point for HRSA-wide initiatives that impact the OIT.

Division of IT Operational Support Services (RB58)

The Division of IT Operational Support Services (ITOSS) (1) provides leadership, consultation, training, and management services for HRSA's enterprise computing environment; (2) directs and manages the support and acquisition of HRSA network and desktop hardware, servers, wireless communication devices, and software licenses; (3) is responsible for the HRSA Data Center and the operation and maintenance of a complex, high-availability network infrastructure on which mission-critical applications are made available 24 hours per day, 7 days per week; (4) controls infrastructure configuration management, installations and upgrades, security perimeter protection, and system resource access; (5) coordinates IT activities for Continuity of Operations Planning (COOP) Agency-wide including provisioning and maintaining IT infrastructure and hardware at designated COOP locations to support emergency and COOP requirements; (6) maintains workstation hardware and software configuration management controls; (7) in close coordination with the CISO, the ITOSS implements HRSA level policies, procedures, guidelines, and standards for the incorporation of intrusion detection systems, vulnerability scanning, forensic and other security tools used to monitor automated systems and subsystems to safeguard HRSA's electronic information and data assets; (8) the Chief Technology Officer (CTO), reporting to the ITOSS Division Director is responsible for assessing emerging technologies and the subsequent impact on current infrastructure restraints and program objectives; (9) coordinates and engages with all OIT Divisions and Branches to insure that advanced technology is being utilized to achieve program objectives through innovative technology use; and (10) provides leadership and establishes policy and provides oversight for Agency IT configuration management.

Division of Web Support and Collaboration Services (RB59)

The Division of Web Support and Collaboration Services (WSCS) (1) provides consultation, assistance and services to HRSA to promote and manage information dissemination, collaboration and business process improvement solutions through the use of Web-based tools; (2) in collaboration with the Office of Communications, is responsible for the design, deployment and maintenance of HRSA's internal and external Web sites including development and implementation of related policies and procedures; and (3) supports the collaboration and business needs of HRSA by providing and supporting an enterprise-wide collaboration platform, business process management tools and Web-conferencing tools.

Section RB5–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is upon date of signature.

Dated: November 1, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–28189 Filed 11–8–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Free Trade Agreements

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-day notice and request for comments; Extension and revision of an existing information collection: 1651–0117.

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: Free Trade Agreements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a 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** on September 7, 2010 (Volume 75, Page 54352), 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 December 9, 2010.

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: Free Trade Agreements.

OMB Number: 1651–0117.

Form Number: None.

Abstract: Free trade agreements are established to reduce and eliminate barriers, strengthen and develop economic relations, and to lay the foundation for further cooperation to expand and enhance benefits of the agreement. Free trade agreements establish free trade by reduced-duty treatment on imported goods. The United States has numerous free trade agreements with various countries, eight of which are included in this information collection: Chile, Singapore, Australia, Morocco, Bahrain, Jordan, Oman, and Peru. These agreements involve collection of data elements such as information about the importer and exporter of the goods, a description of the goods, tariff classification number, and the preference criterion in the Rules of Origin.

Respondents can obtain information on how to make claims under these free trade agreements by going to *http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/.*

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on the addition of free trade agreements with Oman and Peru.

Type of Review: Extension (with change)

Affected Public: Businesses.

Estimated Number of Respondents: 116,100.

Total Number of Estimated Annual Responses: 116,100.

Estimated time per Response: 12 minutes.

Estimated Total Annual Burden Hours: 23,220.

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: November 3, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–28214 Filed 11–8–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Agency Information Collection Activities: Importation Bond Structure

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-day notice and request for comments; Extension and revision of an existing information collection: 1651–0050.

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: Importation Bond Structure. This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours and to CBP Form 301. 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 50772) on August 17, 2010, allowing for a 60-day comment period. One comment was received. 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 December 9, 2010.

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: Importation Bond Structure.

OMB Number: 1651–0050.

Form Numbers: 301 and 5297.

Abstract: Bonds are used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of cargo and conveyances through CBP processing; and to provide legal recourse for the Government for noncompliance with laws and regulations. Any person who is required to post a bond to secure a customs transaction usually submits the bond on CBP Form 301, Customs Bond, to CBP.

CBP proposes to revise CBP Form 301 in order to accurately reflect the changes that have occurred with regard to CBP bonds. Specifically, the revised Form 301 will capture the new types of bonds which have been authorized by law and regulation, as well as better harmonize this form with current and future automation system requirements.

Section II of the CBP Form 301 will be revised to specifically cover continuous activity code bonds for Importer Security Filing, Marine Terminal Operator, and Intellectual Property Rights Samples.

In accordance with public comments received, CBP also proposes to make the following changes to Form 301:

(1) Remove the phrase from *Section II* of the form "1a may be checked independently or with 1, and" because these activity codes should not be combined.

(2) In *Section II* of Form 301, replace the term "Single Entry Bond" with the term "Single Transaction Bond", in each place it appears, in order to accommodate transactions that are not entries.

(3) In *Section III* of Form 301, replace the term "Importer Name", in each place it appears, with the term "Name" to accommodate parties other than importers that use Form 301.

(4) In *Section III* of Form 301, replace the term "Importer Number", in each place it appears, with the term "Identification Number" in order to include all the types of filing numbers listed in 19 CFR 24.5.

(5) Delete the term "Form 5297" in both Footnote 8 and Footnote 9 of Form 301 so that it does not exclude electronic filing of the information.

(1) Create a continuation sheet for Form 301.

Bonds are usually executed by an agent of the surety. The surety company grants authority to the agent via CBP Form 5297, Corporate Surety Power of Attorney. Once this form is filed with CBP, the validity of the authority of the agent executing the bond and the name of the surety can be verified to the surety's grant. The trade community now has the ability to submit the information on CBP Form 5297 via the Internet by using the Automated Commercial Environment (ACE) portal. ACE surety portal account access allows sureties to add, revoke, and change their surety agent powers of attorney electronically. The ACE account is available to any surety who applies for the functionality at *http://www.cbp.gov*. CBP Forms 301 and 5297 are accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/*.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on revised estimates by CBP. CBP also proposes to revise CBP Form 301 as specified in the "Abstract Section" of this notice.

Type of Review: Extension (with change).

Affected Public: Businesses.

Form 301, Customs Bond

Estimated Number of Respondents: 800,000.

Total Number of Estimated Annual Responses: 800,000.

Estimated time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 200,000.

Form 5297, Corporate Surety Power of Attorney

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

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: November 3, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–28213 Filed 11–8–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Intent To Prepare One Programmatic Environmental Impact Statement for the Northern Border Between the United States and Canada

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of intent.

SUMMARY: U.S. Customs and Border Protection (CBP) informs the public that it intends to prepare one Programmatic Environmental Impact Statement (PEIS) for the Northern Border between the United States and Canada. Previously, CBP had published a notice in the **Federal Register** stating that CBP intended to prepare four such documents, each covering a different region of the Northern Border. However, after conducting a public scoping process, CBP has determined that it would be preferable to produce one document covering the entire Northern Border to ensure that CBP effectively analyzes and conveys impacts that occur across the region of the Northern Border. The overall anticipated area of study, extending approximately 100 miles south of the Northern Border, will remain the same.

FOR FURTHER INFORMATION CONTACT: Jennifer Hass, CBP, Office of Administration, telephone (202) 344–1929. You may also visit the Northern Border PEIS Web site at: *http://www.NorthernBorderPEIS.com.*

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2010, CBP published in the **Federal Register** (75 FR 38822) a document entitled Notice of Intent to Prepare Four Programmatic Environmental Impact Statements for the Northern Border Between the United States and Canada and To Conduct Public Scoping Meetings. The notice announced that CBP intended to prepare four Programmatic Environmental Impact Statements (PEISs) to analyze the environmental effects of current and potential future CBP border security activities along the Northern Border between the United States and Canada. Each PEIS was to cover one region of the Northern Border: the New England region, the Great Lakes region, the region east of the Rocky Mountains, and the region west of the Rocky Mountains.

The notice also announced and initiated the public scoping process to gather information from the public in preparation for drafting the PEISs. In this scoping process, CBP solicited written comments from the public and held 11 public scoping meetings in locations near the Northern Border. CBP conducted this public scoping process in order to obtain input concerning the range of environmental considerations for inclusion within the PEISs. As indicated in the prior notice, the scoping period concluded on August 5, 2010.

As a result of input received during the scoping process, CBP has decided to refocus its approach and develop one PEIS covering the entire Northern Border, rather than four separate, regional PEISs. Through this refocused approach, CBP will further clarify the proposed action, alternatives, and potential impacts across the four previously identified regions. CBP's principal reasons for preparing a single PEIS with sections for each region are:

(1) CBP's need to identify a single unified proposal and alternatives for maintaining or enhancing security along the Northern Border, and

(2) Certain resources of concern for this PEIS extend or move across the PEIS regions previously identified (*e.g.* habitat of various wildlife). Thus, to ensure that CBP effectively analyzes and conveys impacts that occur across regions of the Northern Border, a

unified PEIS is desirable. The overall anticipated area of study, extending approximately 100 miles south of the Northern Border, remains the same.

CBP is continuing to review the results of the scoping process and, as described in the July 6 notice, will compile a list of comments received to be included in a scoping report. This report will be made available on the project Web site: *http://www.NorthernBorderPEIS.com* and upon written request. Written requests for the scoping report may be made via e-mail to *comments@NorthernBorderPEIS.com,* subject: Scoping Report, or via mail to CBP Northern Border PEIS (Scoping Report), P.O. Box 3625, McLean, Virginia, 22102. The body of the request should read, "Request a copy of the scoping report for U.S. Customs and Border Protection Northern Border PEIS." CBP anticipates the scoping report will be available in November 2010.

The information gained from the scoping process will aid CBP as it prepares the draft PEIS. This draft PEIS will be followed, after a period of public comment, with a final PEIS. CBP plans to use the information derived from the analysis in the PEIS in management, planning, and decision-making for its mission and its environmental stewardship responsibilities, as well as to establish a foundation for future impact analyses. For complete information, please see the July 6 **Federal Register** notice (75 FR 38822).

Next Steps

This environmental analysis process is being conducted pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* (NEPA), the Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Directive 023–01 (renumbered from 5100.1), *Environmental Planning Program of April 19, 2006.* In accordance with NEPA, the draft PEIS will be made available to the public for review and comment through a Notice of Availability (NOA) in the **Federal Register**. The NOA will provide directions for obtaining copies of the draft PEIS as well as dates and locations for any associated public participation meetings. After a public comment period on the draft PEIS, CBP will complete a final PEIS. CBP will continue to announce information on exact locations and times of public meetings as well as project information through local newspapers and the project Web site: *http://www.NorthernBorderPEIS.com.*

Dated: November 4, 2010.

Rob Janson,

Acting Executive Director, Facilities Management and Engineering, Office of Administration.

[FR Doc. 2010–28239 Filed 11–8–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0066]

Recovery Publication, P–395, Fire Management Assistance Grant Program (FMAGP) Guide

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the Fire Management Assistance Grant Program (FMAGP) Guide. The Guide describes the FMAGP declaration process, eligibility, grant management and application procedures, and other related program guidance.

DATES: Comments must be received by December 9, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0066 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Allen Wineland, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, *allen.wineland@dhs.gov,* 202–646–3661.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified under the **ADDRESSES** caption. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2010–0066. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

II. Background

This guide describes the FMAGP basic provisions, application procedures, and other related program policies and guidance.

FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0066. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

Robert A. Farmer,

Deputy Director, Office of Policy and Program Analysis,Federal Emergency Management Agency.

[FR Doc. 2010–28205 Filed 11–8–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–106]

Notice of Submission of Proposed Information Collection to OMB; Implementation of the Violence Against Women and Department of Justice Reauthorization Act of 2005

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Residents residing In the public housing and Section 8 voucher programs will submit a HUD approval certification form that attest that the individual is a victim of abuse and that the incidences of abuse are bona fide. Without the certification, a PHA or owner may terminate assistance. The information provided to the PHA and owner is confidential.

DATES: Comments Due Date: December 9, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0249) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Implementation of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

OMB Approval Number: 2577–0249.

Form Numbers: Hud-50066.

Description of the Need for the Information and its Proposed Use: Residents residing In the public housing and Section 8 voucher programs will submit a HUD approval certification form that attest that the individual is a victim of abuse and that the incidences of abuse are bona fide. Without the certification, a PHA or owner may terminate assistance. The information provided to the PHA and owner is confidential.

Frequency of Submission: Other one time.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	200		1		24		4,800

Total Estimated Burden Hours: 4,800.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 3, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–28286 Filed 11–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–105]

Notice of Submission of Proposed Information Collection to OMB; Restrictions on Assistance to Noncitizens

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Section 214 of the Housing and Community Development Act of 1980, as amended, probibits HUD from making financial assistance available for noncitizens, unless they meet one of the categories of eligible immigration status specified in Section 214. Prior to being admitted, all eligible noncitizens younger than age 62 must sign a declaration of their status and a verification consent form and provide their original Immigration and Naturalization Service (INS) documentation.

DATES: Comments Due Date: December 9, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0014) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a

request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2501–0014.

Form Numbers: HUD 9886–Arabic, HUD 9886–Chinese, HUD 9886–Korean, HUD–9886, HUD–9887–9887A, HUD 9886–LAO, HUD 9886–Cambodian, HUD 9886–Vietnamese, HUD 9886–Spanish, HUD 9886–Creole, HUD 9886–Russian, HUD 9886–Hmong, HUD 9886–French.

Description of the Need for the Information and its Proposed Use: Section 214 of the Housing and Community Development Act of 1980, as amended, probibits HUD from making financial assistance available for noncitizens, unless they meet one of the categories of eligible immigration status specified in Section 214. Prior to being admitted, all eligible noncitizens younger than age 62 must sign a declaration of their status and a verification consent form and provide their original Immigration and Naturalization Service (INS) documentation.

Frequency of Submission: On occasion, Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,886,392		3.739		0.0174		188,737

Total Estimated Burden Hours: 188,737.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 03, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–28291 Filed 11–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–103]

Notice of Submission of Proposed Information Collection to OMB; Informed Consumer Choice Notice and Application for FHA Insured Mortgage

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare these forms.

DATES: Comments Due Date: December 9, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0059) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. 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: Informed Consumer Choice Notice and Application for FHA Insured Mortgage.

OMB Approval Number: 2502–0059.

Form Numbers: HUD 92900–LT, HUD–92900–A, HUD–92561, HUD–92544.

Description of the Need for the Information and its Proposed Use: The forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare these forms.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12,240		469.70		0.0832		478,758

Total Estimated Burden Hours: 478,758.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 3, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–28296 Filed 11–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–104]

Notice of Submission of Proposed Information Collection to OMB Minimum Property Standards for Multifamily and Care-Type Occupancy Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This information is collected from State and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These Standards will protect the Department's interest by requiring certain features of design and construction.

DATES: Comments Due Date: December 9, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0321) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Minimum Property Standards for Multifamily and Care-Type Occupancy Housing.

OMB Approval Number: 2502–0321.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

This information is collected from State and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These Standards will protect the Department's interest by requiring certain features of design and construction.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	1,000		1		8.4		8,400

Total Estimated Burden Hours: 8,400.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 3, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–28294 Filed 11–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2010–0055]

BOEMRE Information Collection Activity: 1010–0149, Platforms and Structures, Extension of a Collection; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of a renewal of an information collection (1010–0149).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BOEMRE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart I, "Platforms and Structures."

DATES: Submit written comments by January 10, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0055 then click search. Follow the instructions to submit public comments

and view supporting and related materials available for this collection. BOEMRE will post all comments.

• *E-mail: cheryl.blundon@boemre.gov*. Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0149 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart I, Platforms and Structures.

OMB Control Number: 1010–0149.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 43 U.S.C. 1356 requires the issuance of "* * * regulations which require that any vessel, rig, platform, or other vehicle or structure * * * (2) which is used for activities pursuant to this subchapter, comply * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes * * *." Section 43 U.S.C. 1332(6) also states, "operations in the [O]uter Continental Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, BOEMRE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Platform applications are subject to cost recovery, and BOEMRE regulations specify service fees for these requests.

These authorities and responsibilities are among those delegated to BOEMRE to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This ICR addresses the regulations at 30 CFR 250, Subpart I, Platforms and Structures, and the associated supplementary notices to lessees and operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

Regulations at 30 CFR 250 implement these statutory requirements. We use the information submitted under Subpart I to determine the structural integrity of all offshore platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and pollution prevention. More specifically, the information is used to:

• Review data concerning damage to a platform to assess the adequacy of proposed repairs.

• Review plans for platform construction (construction is divided into three phases–design, fabrication, and installation) to ensure the structural integrity of the platform.

• Review verification plans and reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the design, fabrication, and installation phases of platform construction.

• Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved plans.

• Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, Data and information to be made available to the public or for limited inspection. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annual.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators, their certified verification agents (CVAs), and third-party reviewers.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 108,933 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation: 30 CFR 250 Subpart I and related NTLs	Reporting and/or recordkeeping requirement	Hour burden / Non-hour cost burdens
	General Requirements for Platforms	
900(b), (c), (e); 901(b); 905; 906; 910(c), (d); 911(c), (g); 912; 913; 919.	Submit application, along with reports/surveys and relevant data, to install new platform or floating production facility or conversion of existing platform for new purpose or significant changes to approved applications, including use of alternative codes, rules, or standards; CVA changes; pay.gov confirmation receipt; and Platform Verification Program (PVP) plan for design, fabrication and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms and new floating platforms. Consult as required with BOEMRE and/or USCG. Re/Submit application for major modification(s)/repairs to any platform; pay.gov confirmation receipt; and related requirements.	60. $21,075 PVP. $3,018 fixed structure. $1,536 caisson/well protector. $3,601 modifications.

Citation: 30 CFR 250 Subpart I and related NTLs	Reporting and/or recordkeeping requirement	Hour burden
		Non-hour cost burdens
900(b)(5)	Submit application for conversion of the use of an existing mobile offshore drilling unit.	24.
900(c)	Notify BOEMRE within 24 hours of damage and emergency repairs and request approval of repairs.	16.
900(e)	Re/Submit platform installation date and the final as-built location to the Regional Supervisor within 45 days after platform installation.	.5.
901(a); NTLs	Submit CVA documentation under API RP 2RD, API RP 2SK, and API RP 2SM	100.
901(a); NTLs	Submit hazards analysis documentation under API RP 14J	600.
903*	Record original and relevant material test results of all primary structural materials; retain records during all stages of construction. Compile, retain, and provide location/make available to BOEMRE for the functional life of platform, the as-built drawings, design assumptions/analyses, summary of nondestructive examination records, inspection results, and records of repair not covered elsewhere.	100.
903(c); 905(k)	Submit certification statement [a certification statement is not considered information collection under 5 CFR 1320.3(h)(1); the burden is for the insertion of the location of the records on the statement and the submittal to BOEMRE—this statement submitted with the application].	0.
905(i)	Provide a summary of safety factors utilized in the design of the platform	.25.
Platform Verification Program		
911(d); 916(c); 917(c); 918(c).	Submit complete schedule of all phases of design, fabrication, and installation with required information; also submit Gantt Chart with required information.	40.
911(e); 914	Submit nomination; qualification statement and required documentation for CVA	16.
912(a)	Submit design verification plans with your DPP or DOCD	Burden covered under 1010–0151.
916(c)	Submit interim and final CVA reports and recommendations on design phase	200.
917(a), (c)	Submit interim and final CVA reports and recommendations on fabrication phase, including notices to BOEMRE and operator/lessee of fabrication procedure changes or design specification modifications.	100.
918(c)	Submit interim and final CVA reports and recommendations on installation phase	60.
919(a)	Develop in-service inspection plan and keep on file	50.
919(a)	Submit annual (November 1 of each year) report on inspection of platforms or floating production facilities, including summary of testing results.	80.
919(b) NTL	After an environmental event, submit to Regional Supervisor initial report followed by updates and supporting information.	12 (initial) 12 (update).
919(c) NTL	Submit results of inspections	120.
920(a)	Demonstrate platform is able to withstand environmental loadings for appropriate exposure category.	20.
920(c)	Submit application and obtain approval from the Regional Supervisor for mitigation actions (includes operational procedures).	40.
920(e)	Submit a list of all platforms you operate, and appropriate supporting data, every 5 years or as directed by the Regional Supervisor.	40.
920(f)	Obtain approval from the Regional Supervisor for any change in the platform	40.
900 thru 921	General departure and alternative compliance requests not specifically covered elsewhere in Subpart I regulations.	10.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified four non-hour paperwork cost burdens for this collection. These costs are submitted with specific applications under § 250.905(l) and are as follows: $21,075 for a platform verification program, $3,018 for a fixed structure, $1,536 for a Caisson/Well Protector, and $3,601 for a modification.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should

not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: November 1, 2010.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–28278 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2010–0053]

BOEMRE Information Collection Activity: 1010–0067, Oil and Gas Well-Completion Operations, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of extension of an information collection (1010–0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, subpart E, "Oil and Gas Well Completion Operations." This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 9, 2010.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail. (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0067). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* Go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID BOEM–2010–0053 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- *E-mail: cheryl.blundon@boemre.gov. Mail or hand-carry comments to:* Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0067 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, subpart E, Oil and Gas Well-Completion Operations.

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.,* requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to BOEMRE. To carry out these responsibilities, BOEMRE issues regulations governing oil and gas and sulphur operations in the OCS. This ICR addresses the 30 CFR 250, subpart E, regulations implementing these responsibilities.

BOEMRE analyzes and evaluates the information and data collected to ensure that planned well-completion operations will protect personnel and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, BOEMRE uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

Subpart E was revised by rulemaking that became effective June 3, 2010 (75 FR 23582), and addresses the procedures and requirements necessary to monitor, report, and ameliorate sustained casing pressure (SCP) conditions. BOEMRE uses the information to determine whether production from wells with SCP continues to afford the greatest possible degree of safety under these conditions and to require corrective action in specified cases that pose an ongoing safety hazard.

Responses are mandatory. No questions of a sensitive nature are asked. BOEMRE protects information considered proprietary according to Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), and 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection."

Frequency: Varies by section, but is mostly on occasion or annual.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 41,879 hours. The following chart

details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart E	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
	Requests			
502	Request an exception to shutting in producible wells before moving a well-completion rig or related equipment.	5	100 exceptions	500
512	Request establishment, amendment, or cancellation of well-completion field rules.	10	3 field rules	30
500–530	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	2	15 requests	30
Subtotal			118 responses	560
	Record Records			
506	Record dates and times of well-completion operations safety meetings.	½	647 completions × 4 meetings = 2,588.	1,294
511	Record results of weekly traveling-block safety device in operations log.	1	647 completions × 2 recordings = 1,294.	1,294
516(c)(1)	Record all your BOP test pressures	¾	647 completions × 4 recordings = 2,588.	1,941
516(e)	Record reason for postponing BOP test in driller's report	½	54 recordings	27
516(i)	Record time, date, and results of all pressure tests, crew drills, actuations, and inspections in driller's report.	5	647 completions × 4 recordings = 2,588.	12,940
516(i)(1)	Record BOP test pressure on pressure charts	2	647 completions × 4 recordings = 2,588.	5,176
Subtotal			11,700 responses	22,672
	Submittals			
513; 515(a); 525	Submit Forms MMS–123, MMS–123S, MMS–124, and MMS–125 and all accompanying information to conduct well-completion operations.	Burden included under 1010–0141.		0
517(b)	Submit results of casing pressure testing, callipering, and other evaluations.	4	82 results	328
525(a); 526	Submit notification of corrective action	1½	66 actions	99
525(a); 529(a)	Submit a corrective action plan	11	130 plans	1,430
525(b); 527	Submit a casing pressure request	9	1,235 requests	11,115
529(b)	Submit the casing pressure diagnostic test data	1	65 submittals	65
Subtotal			1,578 responses	13,037
	Post/Retain			
514(c)	Post the number of stands of drill pipe/collars that may be pulled and equivalent well-control fluid volume.	½	639 postings	*320
516(i)(6)	Retain all records including pressure charts, driller's report, referenced documents pertaining to BOP tests, actuations, and inspections at the facility for duration of the activity.	1½	647 records	*971
516(i)(7)	After completion of well, retain all records for 2 years at location conveniently available to BOEMRE.	2	647 records	1,294
523	Retain records of casing pressure and diagnostic tests for 2 years or until the well is abandoned.	1	3,025 records	3,025
Subtotal			4,958 responses	5,610
Total Hour Burden			18,354 responses	41,879

* Rounded.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*)

requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 12, 2010, we published a **Federal Register** notice (75 FR 18545) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 9, 2010.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: October 21, 2010.

Sharon Buffington,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–28277 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–N210; 10120–1112–0000–F2]

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit for the Proposed Kauai Seabird Habitat Conservation Plan on Kauai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a joint Federal/State Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), in coordination with the Hawaii Department of Land and Natural Resources (DLNR), for the proposed Kauai Seabird Habitat Conservation Plan (KSHCP) and the expected applications from public and private entities on Kaua'i for incidental take permits (ITPs, or permits). The proposed KSHCP is being prepared under the Endangered Species Act of 1973, as amended (ESA). The ITPs would authorize incidental take of the Federally endangered Hawaiian petrel (*Pterodroma sandwichensis*), the Federally threatened Newell's (Townsends) shearwater (*Puffinus auricularis newelli*), and the band-rumped storm-petrel (*Oceanodroma castro*), a Federal candidate species that could become listed during the term of the permit (collectively, these three species are hereafter referred to as the "Covered Species"). The DLNR is preparing the KSHCP under which numerous applicants are anticipated to apply for incidental take of the Covered Species due to adverse effects of light attraction and these birds colliding with utility lines and associated structures.

We provide this notice to announce the initiation of a public scoping period during which we invite other agencies and the public to attend a public meeting and submit oral and written comments that provide suggestions and information on the scope of issues and alternatives to be addressed in the joint EIS.

DATES: Comments: To ensure consideration, please submit your comments by December 9, 2010.

Public Meeting Dates and Locations: One Monday, November 10, 2010, 6–8 p.m at the Chiefess Kamakahelei Middle School Cafeteria, 4431 Nuhou Street, Lihue, HI 96766.

ADDRESSES: Oral and written comments will be accepted during the meeting. You may also submit comments by one of the following methods:

U.S. mail or hand-delivery to: Bill Standley, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850.

Facsimile: (808) 792–9580 (Attention: Bill Standley).

Electronic mail (e-mail): bill_standley@fws.gov.

Comments received will be available for public inspection by appointment during normal business hours (Monday through Friday, 8 a.m. to 4:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Standley, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (*see* **ADDRESSES** above), telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodation in order to attend and participate in the public meeting should contact Bill Standley, Fish and Wildlife Biologist, as soon as possible (*see* **ADDRESSES**), or at (808) 792–9400. In order to allow sufficient time to process requests, please call no later than one (1) week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a) of the ESA (16 U.S.C. 1539 (a)), we may issue permits to authorize incidental take of listed fish and wildlife species. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If the permits are issued, each permittee approved under the KSHCP would receive assurances

under the Service's "No Surprises" regulations at 50 CFR 17.32(b)(5) and 50 CFR 17.22(b)(5).

Section 10 of the ESA specifies the requirements for the issuance of ITPs to non-Federal entities. Any proposed take must be incidental to otherwise lawful activities and cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. Among other requirements the impacts of such take must also be minimized and mitigated to the maximum extent practicable. To obtain an ITP, an applicant must submit a plan describing the impact that will likely result from the proposed taking, the measures for minimizing and mitigating the take, the funding available to implement such measures, alternatives to the taking, and the reason why such alternatives are not being implemented.

Covered Species

The Newell's shearwater (ua u), Hawaiian petrel (a o) and band-rumped storm petrel (ake ake) breed on the island of Kauai and feed on the open ocean. Over 80 percent of the world's population of Newell's shearwater nests on Kauai and its population have declined severely since the early 1990s. The affected seabirds spend a large part of the year at sea. Adults return to nesting grounds in the interior mountains of Kauai beginning in March and April, and depart beginning in September. The Hawaiian petrel and Newell's shearwater are philopatric (return to the nest area near where they were hatched). Fledglings (*i.e.,* young birds learning how to fly) of these species make their first journey from the nesting colony to the sea from late September through early December, with a peak occurring in mid-October and again in mid-November.

The adverse effects to seabirds from light attraction and collisions with utility lines have been documented on Kauai for over three decades. Since 1979, the Save our Shearwaters Program (SOS) has recovered over 32,000 downed seabirds that are voluntarily brought to the program by the community. These ongoing impacts in combination with other land-based threats such as predation and habitat alteration (including that caused by hurricanes) are thought to have contributed to severe population declines in the Covered Species. Both adults and fledglings can collide with tall buildings, towers, power lines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. Nocturnally active seabirds, particularly fledglings, are attracted to bright lights. The "fallout" of Covered Species and other seabirds due to light attraction occurs primarily from September through December. Disoriented seabirds are commonly observed circling repeatedly around exterior light sources until they fall exhausted to the ground or collide with structures. Species such as shearwaters and petrels typically need open spaces with strong updrafts and vertical drop offs to take off from land. Without human intervention, downed seabirds are assumed to die in most instances due to starvation, predation, or mortality resulting from vehicular traffic. The annual release rate for rescued seabirds through the SOS Program is over 90 percent.

There is a need to address the long-standing and previously unmitigated, unauthorized incidental take of the Covered Species caused by light attraction. Since 2005, dozens of businesses and agencies on Kauai voluntarily began efforts to avoid and minimize light attraction of seabirds and train staff in the active search, rescue, and reporting of downed birds. However, to the extent incidental take cannot be eliminated, Federal and State incidental permits are needed.

The Proposed Plan

In accordance with section 10(a)(2)(A) of the ESA, the DLNR is preparing the island-wide, multi-party KSHCP. As presently conceived the KSHCP proposes a 30-year permit period to address incidental take of the Covered Species. The purpose of the KSHCP is to address the incidental take of the Covered Species due to existing and planned outdoor lights and overhead utilities. The KSHCP is designed as a multi-party plan with each participant holding a State and Federal permit and being legally responsible for meeting the conditions of both permits. In accordance with the ESA the availability of the KSHCP for public review and comment will be noticed in the **Federal Register** when a complete application package is submitted to the Service.

The maximum terrestrial covered area for the KSHCP includes 549 square miles and over 350,000 acres on Kauai. The size of the covered area for participating entity will be a specified subset of this total using Tax Map Key (TMK) or other legally acceptable definitions, and will be included for with each voluntary ITP application. Each participating entity would hold a State and Federal permit and sign an Implementing Agreement (IA) all of which would define their legal responsibilities for the implementation of avoidance, minimization, and monitoring measures, and for submitting HCP fees to fund compensatory mitigation, HCP administration, compliance monitoring, effects monitoring and mitigation efficacy monitoring. Adaptive management and annual monitoring would also be essential components of the HCP.

Entities seeking take authorization under the KSHCP would be required to fill out an application template that requires specific and detailed information about the covered facility in terms of its location, size, ownership, lights and utility lines, regulations pertaining to the use of lights and utility lines, avoidance and minimization plans and evaluation of alternatives. The ITP application would also contain a section used to calculate recommended incidental take coverage levels for all species. Incidental take calculations would be based on the best available data sets including SOS recovery data and nocturnal ornithological radar data.

KSHCP participants would be required to: (1) Avoid impacts to the Covered Species to the maximum extent practicable by, for example, removing or turning off problematic lights and undergrounding high risk utility lines; and (2) minimize impacts to the Covered Species to the maximum extent practicable, for example, through a variety of KSHCP-recommended methods such as shielding, redirecting lights, installing motion sensors, altering light/utility structures, and training staff to respond to downed seabirds appropriately. Selected avoidance and minimization measures must be described in thorough detail by each applicant, including a schedule and funding and the reasons for selecting among avoidance and minimization alternatives would need to be clearly defined and supported in each ITP application submitted to the Service under the KSHCP. Support for the SOS program would likely be part of the KSHCP impact minimization policy because SOS recoveries support the rescue, rehabilitation, and release of affected (downed) seabirds. All participants in the KSHCP would be legally bound to implement avoidance and minimization requirements tailored to their unique facility(ies) as detailed in their ITP and IA.

Habitat protection and management programs implemented to compensate for unavoidable take of the Covered Species would be detailed in the KSHCP. For example, the mitigation program would include colony protection (including surveys, fencing, and predator control), monitoring, and

management actions necessary to compensate for the impacts of incidental take of the Covered Species and to provide a net environmental benefit. The goals and objectives of the compensatory mitigation program would be based on specific recovery goals for each listed species. The KSHCP compensatory program would likely include weed, ungulate, and predator removal designed to benefit the Covered Species and other listed flora and fauna. Part of the analysis in the KSHCP will be to evaluate the potential effects of covered activities to rare plants, including but not limited to *Acaena exigua, Adenophorus periens, Alsinidendron lychnoides, Cyanea recta, Cyrtandra cyaneoides, Delissea rivularis, Exocarpus luteolus, Myrsine linearifolia, Nothocestrum peltatum, Plantago princeps var. anomala, Plantago princeps var. longibracteata, Platanthera holochila, Poa sandvicensis, Poa siphonoglossa, Remya montgomeryi, Schiedea membranacea, Solanum sandwicense, and Xylosma crenatum.* A ''Plant Protection Plan'' should be included in the KSHCP to ensure protection of all listed plants during seabird mitigation actions. The KSHCP compensatory mitigation program is also expected to support long-term conservation partnerships with land owners and existing efforts by non-profit organizations that provide long-term benefits to listed seabirds, plants, watersheds, and other non-listed plants and animals of Kauai.

Fees for each applicant/participant would be proportionate to the level of incidental take authorized as well as the type of impact: lights or utility lines. Fees submitted under the KSHCP would be used to fund HCP administration, monitoring, compensatory mitigation, and the SOS Program.

As currently envisioned, administration and management related to implementation of the KSHCP would be the responsibility of the DLNR or their designee, with appropriate oversight by the Service. An annual review of actions implemented under the KSHCP would be conducted by the Endangered Species Recovery Committee (ESRC). Based on that review the ESRC may forward recommendations for modifying KSHCP-related actions to the Board of Land and Natural Resources.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, our action would be the proposed issuance of ITPs based on the KSHCP. The Service and the DLNR are proposing to prepare a joint Federal/State EIS to evaluate the effects of the proposed KSHCP and proposed issuance of Federal and State ITPs on the human environment. The DLNR's preparation of the draft KSHCP and related EIS is based on conditions of an ESA Section 6 HCP Planning and Coordination grant awarded to the DLNR in 2009. The joint Federal/State EIS will be prepared in compliance with NEPA and Hawaii Revised Statutes (HRS) Chapter 343. Although DLNR will have the lead for preparing the EIS the Service will be responsible for the scope and content of the document for NEPA purposes, and the DLNR will be responsible for the scope and content of the document for the purposes of satisfying requirements of HRS Chapter 343.

The EIS will consider the proposed action, (the issuance of Section 10(a)(1)(B) permits under the ESA), no action (*i.e.,* no permit issuance), a reasonable range of other alternatives, and the associated impacts of each alternative. A detailed description of the proposed action and other alternatives (including no action) will be included in the EIS. The range of alternatives developed may vary by the level of impacts caused by the proposed activities, their specific locations, and the conservation measures involved. Potential alternatives may include various methods of minimizing take through modifications of existing power lines, structures, and lights; placing power line segments underground; implementing design standards for new facilities; variations in the scope of covered activities; variations in the location, amount and type of conservation including developing and implementing various approaches for improving seabird survival and breeding success; variations in permit duration; or a combination of these elements. We will consider other reasonable alternatives recommended during this scoping process in order to develop a full range of alternatives.

The EIS will analyze direct, indirect, and cumulative impacts on the ecosystem and other aspects of the human environment including, but not limited to, biological resources, land use, air quality, water quality, mineral resources, water resources, recreation, cultural and archeological resources, visual resources, socioeconomics, and other issues that could occur with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce those impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321), the Council on Environmental Quality regulations (40 CFR 1500–1508), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues and alternatives related to the proposed action.

We request comments, suggestions, and data from all interested parties to ensure that a reasonable range of alternatives is presented and that all potentially significant issues are identified in the EIS. We will fully consider all comments received during the comment period. Comments and materials we receive will become part of the public record and will be available for public inspection, by appointment, during regular business hours. 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: October 15, 2010.

Richard Hannan,

Deputy Regional Director.

[FR Doc. 2010–28272 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–N219; 10120–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Permit; Construction and Operation of Kaheawa II Wind Energy Generation Facility, Maui, HI; Draft Habitat Conservation Plan and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Kaheawa Wind Power II, LLC (KWP II) (Applicant) for an incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The Applicant is requesting an incidental take permit under the ESA to authorize take of three Federally endangered and one threatened bird species. The permit application includes a draft Habitat Conservation Plan (HCP) and a draft Implementing Agreement (IA). We also announce the availability of a draft Environmental Assessment (EA) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). We are making the permit application package and draft EA available for public review and comment.

DATES: All comments from interested parties must be received on or before December 9, 2010.

ADDRESSES: Please address written comments to Loyal Mehrhoff, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room #3–122, Honolulu, HI 96850. You may also send comments by facsimile to (808) 792–9580.

FOR FURTHER INFORMATION CONTACT: James Kwon, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (*see* **ADDRESSES** above), telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION: The Applicant is requesting an incidental take permit under the ESA to authorize take of the Federally endangered Hawaiian petrel (*Pterodroma sandwichensis*), endangered Hawaiian goose (nēnē) (*Branta sandvicensis*), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), and the threatened Newell's (Townsend's) shearwater (*Puffinus auricularis newelli*) (collectively these four species are hereafter referred to as the "Covered Species"). The permit application includes a draft Habitat Conservation Plan (HCP) that describes the Applicant's actions and the measures the Applicant will implement to minimize, mitigate, and monitor incidental take of the Covered Species, and a draft Implementing Agreement (IA).

Availability of Documents

You may request copies of the permit application, which includes the draft HCP, IA, and EA, by contacting the Service's Pacific Islands Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** above). These documents are also available electronically for review on the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office Web site at *http://www.fws.gov/pacificislands.* Comments and materials we receive, as well as supporting documentation we use in preparing the NEPA document, will become part of the public record and will be available for public inspection by appointment, during regular business hours. 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.

We specifically request comments from the public on whether the application meets the statutory and regulatory requirements for issuing a permit, and identification of any aspects of the human environment that should be analyzed in the draft EA. We are also soliciting comments on the: adequacy of the HCP to minimize, mitigate, and monitor the proposed incidental take of the Covered Species; adequacy of the funding being provided to implement the proposed mitigation program and changed circumstances; adequacy of the adaptive management program; and certainty that mitigation will occur. Please evaluate against the permit issuance criteria found in section 10(a) of the ESA, 16 U.S.C.1539(a), and 50 CFR 13.21, 17.22, and 17.32. In compliance with section 10(c) of the ESA (16 U.S.C 1539(c)), we are making the permit application package available for public review and comment for 30 days (*see* **DATES** section above).

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (Id.). However, under section 10(a) of the ESA (16 U.S.C.1539(a)), we may issue permits to authorize incidental take of listed fish and wildlife species. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If issued, the permittee would receive assurances under the Service's "No Surprises" regulations at 50 CFR 17.32(b)(5) and 50 CFR 17.22(b)(5).

KWP II is a fully owned subsidiary of the Boston-based wind energy company, First Wind, and would supply wind-generated electricity to the Maui Electric Company. KWP II has developed a draft HCP that addresses the incidental take of the four Covered Species caused by the construction and operation of the KWP II wind energy facility over a period of 20 years.

The proposed project is located southeast of the existing 30-megawatt (MW), 21-turbine Kaheawa Wind Power I (KWP I) project. Like KWP II, KWP I is owned by First Wind and is operating under an existing HCP that addresses incidental take of the same four covered species. At KWP I, the Hawaiian petrel, Hawaiian goose, and Hawaiian hoary bat are known to have collided with wind turbine structures.

The Hawaiian petrel and Newell's shearwater breed on Maui and feed in the open ocean. Both covered seabird species spend a large part of the year at sea. Adults generally return to their colonial nesting grounds in the interior mountains of Maui beginning in March and April, and depart beginning in September. Fledglings (*i.e.,* young birds learning how to fly) travel from the nesting colony to the sea in the fall. Both adults and fledglings are known to collide with tall buildings, towers, powerlines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. The nēnē is resident on site and is known to nest in areas adjacent to the proposed wind energy facility. The Hawaii hoary bat has been observed on site by acoustic monitoring; however, no evidence of roosts has been detected.

Proposed Plan

The activities proposed to be covered by the permit include the construction and operation of a new 21-megawatt, 14-turbine wind energy generation facility at Kaheawa Pastures above Maalaea, in the southwestern portion of the Island of Maui, Hawai'i. The proposed facility will consist of 14 General Electric wind turbine generators (WTGs), a maintenance building (and renovations to the existing Operations and Maintenance building), an electrical substation, a battery energy storage system, an underground electrical collection system carrying electrical power from individual WTGs to the

electrical substation, an overhead transmission line to connect the substation to the Maui Electric Company Ltd. transmission line, a permanent unguyed meteorological monitoring tower, and short service roads to connect the new WTGs and other facilities to the existing main access road servicing KWP I. The overall project is located within a combined footprint area of approximately 143 acres (58 hectares). The Applicant has also applied for a State of Hawai'i incidental take license under Hawai'i State law. The draft HCP describes the impacts of take associated with those activities on the Covered Species, and proposes a program to minimize and mitigate take on each of the Covered Species.

KWP II is proposing mitigation measures that include: (1) Active management such as predator removal and construction of cat- and mongoose-proof fences at Hawaiian petrel and Newell's shearwater colonies; (2) captive propagation and release of nēnē goslings; (3) habitat management and predator control to increase nēnē breeding success and survival; (4) surveys to document the distribution and abundance of the Hawaiian hoary bat; and (5) habitat management and reforestation to benefit the recovery of the Hawaiian hoary bat. This HCP incorporates adaptive management provisions to allow for modifications to the mitigation and monitoring measures as knowledge is gained during implementation.

We invite comments and suggestions from all interested parties and request that comments be as specific as possible. In particular, we request information and comments regarding the following issues:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable alternatives could have on endangered and threatened species;

(2) Other reasonable alternatives consistent with the purpose of the proposed HCP as described above, and their associated effects;

(3) Measures that would minimize and mitigate potentially adverse effects of the proposed action;

(4) Adaptive management or monitoring provisions that may be incorporated into the alternatives, and their benefits to listed species;

(5) Other plans or projects that might be relevant to this action;

(6) The proposed term of the Incidental Take Permit and whether the proposed conservation program would minimize and mitigate to the maximum extent practible the incidental take that would be expected to occur over 20 years; and

(7) Whether the HCP meets other ESA sec. 10(a)(2)(B) (16 U.S.C. (a)(2)(B), issuance criteria; and

(8) Any other information pertinent to evaluating the effects of the proposed action on the human environment.

The draft EA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that will be implemented to minimize and mitigate such impacts. The EA contains an analysis of three alternatives: (1) Issuance of an incidental take permit to KWP II on the basis of the proposed HCP with the downroad siting location; (2) the issuance of a permit based on the downwind/downstring siting location; and (3) No Action (no permit issuance and no measures by the Applicant to reduce or eliminate the take of Covered Species).

This notice is provided under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulations (40 CFR 1506.6). The public process for the proposed Federal action will be completed after the public comment period, at which time we will evaluate the permit application, the HCP and associated documents (including the EA), and comments submitted thereon to determine whether or not the proposed action meets the requirements of section 10(a) (16 U.S.C. 1539(a)) of the ESA and has been adequately evaluated under NEPA.

Dated: October 20, 2010.

Richard Hannan,

Deputy Regional Director.

[FR Doc. 2010–28197 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Amendment.

SUMMARY: This notice publishes approval of the Amendments to the Class III Gaming Compact (Amendment) between the State of Oregon and the Siletz Indians of Oregon.

DATES: *Effective Date:* November 9, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240; telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment allows for multi-player games on video lottery terminals (VLTs).

Dated: November 1, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–28267 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[Account No. 3086–SYM]

National Capital Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the National Capital Memorial Advisory Commission (the Commission) plans to meet and discuss currently authorized and proposed memorials in the District of Columbia and its environs.

DATE: Wednesday, November 17, 2010.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov,* by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: In addition to discussing general matters and conducting routine business, the Commission will consider one action item: H.R. 3886, a bill to establish a memorial to Benjamin Banneker in the District of Columbia. There will also be two non-action items before the Commission:

(1) Design consultation—Dwight D. Eisenhower Memorial, and

(2) Status report—John Adams Memorial.

The meeting will be open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the

Commission. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC and its environs.

The members of the Commission are as follows:

Director, National Park Service;
Administrator, General Services Administration;
Chairman, National Capital Planning Commission;
Chairman, Commission of Fine Arts;
Mayor of the District of Columbia;
Architect of the Capitol;
Chairman, American Battle Monuments Commission;
Secretary of Defense.

Dated: October 8, 2010.

Lisa A. Mendelson-Ielmini,

Regional Director, National Capital Region.

[FR Doc. 2010–28292 Filed 11–8–10; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000; NVN–74793; 11–08807; TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, the Bureau of Land Management (BLM) received a petition for reinstatement from Finley Company, *et al.,* for competitive oil and gas lease NVN–74793 for land in Nye County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Atanda Clark, BLM Nevada State Office, 775–861–6632, or e-mail: *Atanda_Clark@blm.gov.*

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rental and royalties at rates of $10 per acre or fraction thereof and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee for the lease and have reimbursed the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate the lease, effective August 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

The BLM has not issued a valid lease affecting the lands to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a).

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2010–28198 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2010–0038]

Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Maryland—Request for Interest (RFI)

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: RFI in Commercial Wind Energy Leasing Offshore Maryland, and Invitation for Comments from Interested and Affected Parties.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) invites submissions describing interest in obtaining one or more commercial leases for the construction of a wind energy project(s) on the Outer Continental Shelf (OCS) offshore Maryland. The BOEMRE will use responses to this RFI to enable BOEMRE to gauge specific interest in commercial development of OCS wind resources in the area described, as required by 43 U.S.C. 1337(p)(3). Parties wishing to obtain a commercial lease for a wind energy project should submit detailed and specific information as described below in the section entitled, "Required Indication of Interest Information." Also, with this announcement the BOEMRE invites all interested and affected parties to comment and provide information—including information on environmental issues and concerns—that will be useful in the consideration of the RFI area for commercial wind energy leases.

This RFI is published pursuant to subsection 8(p) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)) and the implementing regulations at 30 CFR part 285.

The Western edge of the RFI area is located approximately 10 nautical miles from the Ocean City, Maryland coast and the Eastern edge is approximately 27 nautical miles from the Ocean City, Maryland coast. This area was delineated in consultation with the BOEMRE Maryland Renewable Energy Task Force. A detailed description of the RFI area is found later in this notice.

DATES: The BOEMRE must receive your submission indicating your interest in this potential commercial leasing area no later than January 10, 2011 for your submission to be considered. The BOEMRE requests comments or other submissions of information by this same date. We will consider only the submissions we receive by that time.

Submission Procedures: You may submit your indications of interest, comments, and information by one of two methods:

1. *Electronically: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0038, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The BOEMRE will post all comments.

2. *By mail, sending your indications of interest, comments, and information to the following address:* Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Aditi Mirani, Renewable Energy Program Specialist, Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170–4817; telephone (703) 787–1752.

SUPPLEMENTARY INFORMATION:

Purpose of the Request for Interest

The OCS Lands Act requires BOEMRE to award leases competitively, unless BOEMRE makes a determination that there is no competitive interest (43 U.S.C. 1337(p) (3)). This RFI is a preliminary step in the leasing process and the responses to it will assist BOEMRE in determining if there is competitive interest in the area described herein on the OCS offshore Maryland. If, following this RFI, BOEMRE determines that there is no competitive interest in this area offshore Maryland, BOEMRE may proceed with the noncompetitive leasing process pursuant to 30 CFR 285.232 of the Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf (REAU) rule. If, following this RFI, BOEMRE determines that there is competitive interest in the RFI area, BOEMRE may proceed with the competitive leasing process set forth under 30 CFR 285.211 through 285.225. Whether the leasing process is competitive or noncompetitive, it will include opportunities for the public to provide input as well as a thorough environmental review, and will be conducted in conformance with all applicable laws and regulations.

Parties other than those interested in obtaining a commercial lease are welcome to submit comments in response to this RFI. Further, BOEMRE has formed the BOEMRE Maryland Renewable Energy Task Force for coordination among affected Federal agencies and State, local, and Tribal governments throughout the leasing process. Task Force meeting materials are available on the BOEMRE Web site at: *http://www.BOEMRE.gov/offshore/RenewableEnergy/stateactivities.htm#Maryland.*

Background

Energy Policy Act of 2005

The EPAct amended the OCS Lands Act by adding subsection 8(p), which authorizes the Secretary of the Interior to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support the production, transportation, or transmission of energy from sources other than oil or gas. The EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated this authority to issue leases, easements, and ROWs, and to promulgate regulations, to the Director of BOEMRE. The BOEMRE published the REAU rule on April 29, 2009 (74 FR 81 April, 29, 2009).

Determination of Competitive Interest

The first step in determining whether there is competitive interest in an area for offshore wind energy projects will be the evaluation of submissions describing nominations of particular areas of interest as suitable for renewable energy projects in response to this RFI. At the conclusion of the comment period for this RFI, the BOEMRE will review the information received, undertake a completeness review and qualifications review of the nominations received and make a determination of competitive interest.

The BOEMRE will first determine whether there is any geographic overlap of any nominated areas of interest. If two areas of interest fully or partially overlap, the competitive process will begin as outlined in 30 CFR 285.211 through 285.225.

Situations may arise in which several parties nominate project areas that do not overlap. Under these circumstances, BOEMRE could choose to employ an allocation system of leases that involves competition across tracts. This system is referred to as intertract competition and will also be implemented under the competitive process outlined in 30 CFR 285.211 through 285.225. The BOEMRE may consult with the BOEMRE Maryland Renewable Energy Task Force in determining intertract competition.

Competitive Process

If BOEMRE determines that competitive interest exists for this area, it would proceed with the following defined process, as described in 30 CFR 285.211 through 285.225, consulting with the BOEMRE Maryland Renewable Energy Task Force as appropriate:

(1) Call for Information and Nominations (Call). The BOEMRE would publish in the **Federal Register** a notice of a Call for Information and Nominations for leasing in specified areas. The comment period following the notice of a Call would be 45 days. In the notice, BOEMRE may request comments seeking information on areas that should receive special consideration and analysis; on geological conditions (including bottom hazards); on archaeological sites on the seabed or nearshore; on possible multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and on other socioeconomic, biological, and environmental matters.

In response to the Call, the BOEMRE would require potential lessees to submit the following information: the area of interest for a possible lease; a general description of the potential lessee's objectives and the facilities that the potential lessee would use to achieve those objectives; a general schedule of proposed activities, including those leading to commercial operations; data and information concerning renewable energy and environmental conditions in the area of interest, including the energy and resource data and information that was used to evaluate the area of interest; and documentation showing that the submitting entity is qualified to hold a lease. However, an applicant would not be required to resubmit information already submitted in response to this RFI.

(2) Area Identification. The BOEMRE would identify areas for environmental analysis and consideration for leasing in discussion with appropriate Federal agencies, States, local governments, Indian Tribes, and other interested parties based on the information submitted in response to this RFI and the Call.

(3) Proposed Sale Notice. The BOEMRE would then publish a Proposed Sale Notice (PSN) in the **Federal Register** and send the PSN to the Governor of any affected State and the executive of any local government that might be affected. The PSN would describe the areas offered for leasing and the proposed terms and conditions of a lease sale, including the proposed auction format, lease form, and lease provisions. Additionally, the PSN would describe the criteria and process for evaluating bids. The PSN would be issued after completion of the final National Environmental Policy Act (NEPA) documentation, preparation of the Consistency Determination as required by the Coastal Zone Management Act (CZMA) and its implementing regulations, and preparation of various analyses of proposed lease sale economic terms and conditions. The comment period following issuance of a PSN would be 60 days.

(4) Final Sale Notice. The BOEMRE would then publish the Final Sale Notice (FSN) in the **Federal Register** at least 30 days before the date of the sale. Should BOEMRE proceed with a competitive auction to award leases,

BOEMRE would use one of the following three auction formats to select the winner as described at 30 CFR 285.220: sealed bidding; ascending bidding; or two-stage bidding (a combination of ascending bidding and sealed bidding). The BOEMRE would publish the criteria for winning bid determinations in the FSN.

(5) Bid Evaluation. Following publication of the FSN in the **Federal Register**, qualified bidders may submit their bids to BOEMRE in accordance with procedures specified for the auction format to be used. The bids, including the bid deposits, if applicable, would be checked for technical and legal adequacy. The BOEMRE would evaluate the bids to determine if the bidder has complied with all applicable regulations. The BOEMRE reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

(6) Issuance of a Lease. Following the selection of a winning bid by the BOEMRE, the submitter would be notified of the decision and provided a set of official lease forms for execution. The successful bidder would be required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease copies. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEMRE would issue a lease to the successful bidder.

Noncompetitive Process

If BOEMRE determines that there is no competitive interest in a proposed lease, it may proceed with the noncompetitive lease issuance process, pursuant to 30 CFR 285.232, consulting with the BOEMRE Maryland Renewable Energy Task Force as appropriate. Within 60 days of the date of a determination of no competitive interest, the respondent would be required to submit a Site Assessment Plan (SAP), as described in CFR 285.231(d)(2)(i).

Leases issued noncompetitively must comply with the requirements of NEPA, CZMA, the Endangered Species Act (ESA), and other applicable Federal statutes. In accordance with 30 CFR 285.231(e), BOEMRE would coordinate and consult, as appropriate, with affected Federal agencies, State and local governments, and affected Indian Tribes in issuing a noncompetitive lease and developing lease terms and conditions.

It is possible that responses to this RFI may result in determinations that there is competitive interest for some areas but not for others. The BOEMRE will announce publicly its determinations before proceeding with a competitive process, a noncompetitive process, or both.

Environmental Review

BOEMRE will conduct environmental reviews of its leasing and development decisions pursuant to NEPA, ESA and other environmental statutes, as appropriate. Should BOEMRE determine that any activity it is considering authorizing constitutes a major Federal action significantly affecting the environment, BOEMRE would prepare an environmental impact statement (EIS) to analyze the effects of such an action. This would include a public scoping period, including a 30-day comment period and one or more public meetings conducted to solicit input on the alternatives and issues to be addressed in a draft EIS. The draft EIS would describe the nature of the action under consideration, and any potential direct, indirect, and cumulative impacts that the action will have on biological or physical resources, as well as on socioeconomic conditions. During this process, BOEMRE would review pertinent published and unpublished studies from academic and other institutions and organizations and from other Federal and State agencies. Upon completion of a draft EIS, BOEMRE would file the draft EIS with the Environmental Protection Agency (EPA) and would publish a Notice of Availability in the **Federal Register**. The draft EIS would be made available and distributed for public review and comment during a minimum 45-day public comment period.

The BOEMRE would hold one or more public hearings in the vicinity of the proposed lease area for the purpose of receiving comments on the draft EIS. The BOEMRE would announce the time and location in the **Federal Register** at least 30 days before the public hearings.

The BOEMRE would analyze the comments and information received during the public review process, including those from public hearings, along with any newly acquired information and, where appropriate, would incorporate this information into the final EIS. Based on the NEPA analysis, results of the consultations, and comments received, the BOEMRE would develop lease terms or stipulations to protect sensitive areas and/or biological and cultural resources. After the public hearings, BOEMRE would develop a final EIS. The BOEMRE would file the final EIS with EPA and publish a Notice of Availability in the **Federal Register**.

Description of the Area

The RFI area was delineated through consultation with the BOEMRE Maryland Renewable Energy Task Force. The following full OCS lease blocks are included within the RFI area: Salisbury NJ18–05 Blocks 6624, 6625, 6626, 6627, 6628, 6629, 6674, 6675, 6676, 6677, 6678, 6679, 6724, 6725, 6726, 6727, 6728, 6729, 6774, 6775, 6776, 6777, 6778, 6779, 6825, 6826, 6827, 6828, 6829. In addition, parts of the following blocks are included within the area of interest: Salisbury NJ18–05 Blocks 6623, 6673, 6723 and 6773 as described in the table below.

Protraction name	Protraction number	Block number	Sub block
Salisbury	NJ18–05	6623	C,D,G,H,K,L,O,P
Salisbury	NJ18–05	6673	C,D,G,H,K,L,O,P
Salisbury	NJ18–05	6723	C,D,G,H,K,L,O,P
Salisbury	NJ18–05	6773	C,D,G,H

The Western edge of the RFI is approximately 10 nautical miles from the Ocean City, Maryland coast, and the Eastern edge is approximately 27 nautical miles from the Ocean City, Maryland coast. The longest portion of the North/South portion is approximately 13 nautical miles in length and the longest portion of the East/West portion is approximately 17 nautical miles in length. The area is made up of straight lines that are comprised of 29 whole OCS blocks, 3 half blocks and 1 quarter block. The entire area is approximately 206.55 square nautical miles; 175,069.22 acres; or 70848 hectares.

The boundary of the RFI follows the points listed in the table below in clockwise order. Point numbers 1 and 9 are the same. Coordinates are provided in X, Y (eastings, northings) UTM Zone

18N, NAD 83 and geographic (longitude, latitude), NAD83.

Point No.	X (easting)	Y (northing)	Longitude	Latitude
1	512000	4257600	−74.8624454	38.4666335
2	543200	4257600	−74.5048114	38.4656677
3	543200	4233600	−74.5062825	38.2493794
4	519200	4233600	−74.7805670	38.2502128
5	519200	4238400	−74.7804368	38.2934724
6	514400	4238400	−74.8353273	38.2935622
7	514400	4240800	−74.8352784	38.3151920
8	512000	4240800	−74.8627320	38.3152273
9	512000	4257600	−74.8624454	38.4666335

Specific mitigation, stipulations, or exclusion areas may be developed as a result of site specific environmental reviews and associated consultations, as well as continued coordination through the BOEMRE Maryland Renewable Energy Task Force. At this point, for the area under consideration, multiple use conflicts may result in requiring mitigation or excluding certain OCS blocks or portions of OCS blocks. Multiple use issues associated with Department of Defense activities and U.S. Coast Guard responsibilities were raised at the BOEMRE Maryland Renewable Energy Task Force meetings. These are described below.

Traffic Separation Scheme (TSS) and Navigational Issues

The BOEMRE is aware that the RFI area lies adjacent or in close proximity to a Traffic Separation Scheme (TSS) and thus the areas nominated in response to this RFI may need to be modified. The U.S. Coast Guard will require buffers from the edges of a TSS and from the entrance and exit to a TSS. Because proposed project characteristics will be unique to each individual project, the buffers will be further defined as more information is collected, such as vessel traffic types, density and routing direction. Further, it is important to note that two-way routes, fairways and TSSs are various forms of routing measures and that buffer dimensions will vary because of many factors, one of which is vessel traffic density/composition and rules-of-the-road protocol.

The BOEMRE will take into consideration and review data including but not limited to Automatic Identification System (AIS) data that is used on ships and vessel traffic services. The BOEMRE will also consult with relevant agencies such as the U.S. Coast Guard regarding potential issues concerning the TSS and other navigational and safety issues and will use best management practices. Depending on the findings, BOEMRE and the U.S. Coast Guard will develop reasonable and appropriate mitigations such as conditions on turbine placement, preservation of adequate navigation buffers and setbacks, protection of vessel traffic lanes or other operational restrictions utilizing their existing authorities, policies, and procedures.

If such mitigation cannot be achieved, portions of certain nominated areas may need to be excluded. The following blocks are highlighted for consideration of U.S. Coast Guard concerns: 6625, 6626, 6627, 6628, 6629, 6675, 6676, 6677, 6678, 6679, 6726, 6727, 6728, 6729, 6776, 6777, 6778, 6779, 6826, 6827, 6828, and 6829.

Department of Defense Activities and Stipulations

The Department of Defense conducts offshore testing, training, and operations in the RFI area. The BOEMRE will consult with the Department of Defense regarding potential issues concerning offshore testing, training, and operational activities, and will use best management practices to develop appropriate stipulations to mitigate the effects of wind turbines in the RFI area. The Department of Defense will request site specific stipulations in the following 23 lease blocks: 6624, 6625, 6626, 6627, 6628, 6629, 6674, 6675, 6676, 6677, 6678, 6724, 6725, 6726, 6727, 6728, 6774, 6775, 6776, 6777, 6825, 6826, 6827, and the following four partial lease blocks: 6623, 6673, 6723, and 6773.

Map of RFI area

A map of the RFI area can be found at the following URL: *http://www.BOEMRE.gov/offshore/RenewableEnergy/stateactivities.htm#Maryland.*

A large-scale map of the RFI area showing boundaries of the RFI area with numbered blocks is available from BOEMRE at the following address: Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170, Phone: (703) 787–1300, Fax: (703) 787–1708.

Required Indication of Interest Information

If you intend to submit an indication of interest in a commercial lease from BOEMRE for the development of wind resources in the area(s) identified in this RFI, you must provide the following:

(1) The BOEMRE Protraction name, number, and specific whole or partial OCS blocks or areas within the RFI area that are of interest for commercial development, including any required buffer area. If your proposed project area includes one or more partial blocks please describe those partial blocks in terms of a sixteenth of an OCS block. Note that any indications of interest identifying areas greater than what would be reasonably necessary to develop a proposed commercial wind facility will not be considered as valid indications of interest. In addition, BOEMRE will not consider any areas outside of the RFI area in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives;

(3) A schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the RFI area, including energy and resource data and information used to evaluate the RFI area;

(5) Documentation demonstrating that you are legally, technically and financially qualified to hold a lease as set forth in 30 CFR 285.106 and 285.107. Your technical and financial documentation should demonstrate that you are capable of constructing, operating, maintaining, and decommissioning the facilities described in (2) above. Documentation of financial qualification may include

information establishing access to sufficient capital to carry out development. Examples of documentation of technical qualification may include evidence of international or domestic experience with renewable energy projects or other types of electric-energy-related projects.

It is critical that you submit a complete indication of interest so that BOEMRE may proceed with the commercial wind leasing process offshore Maryland in a timely manner. If BOEMRE reviews your indication of interest and determines that it is incomplete, BOEMRE will inform you of this determination in writing. This letter will describe the information that BOEMRE determined to be missing from your indication of interest, and that you must submit in order for BOEMRE to deem your submission complete. You will be given 15 business days from the date of the letter to submit the information that BOEMRE found to be missing from your original submission. If you do not meet this deadline, or if BOEMRE determines this second submittal to be insufficient as well, then BOEMRE retains the right to deem your indication of interest invalid. In that case, BOEMRE would not move forward with your indication of interest submitted in response to this RFI.

Privileged or Confidential Information

The BOEMRE will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that the BOEMRE treat it as confidential. The BOEMRE will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEMRE will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEMRE will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating.

Dated: October 25, 2010.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2010–28269 Filed 11–8–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number is 1140–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: ATF Adjunct Instructor Data Form.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 171, page 54183–54184 on September 3, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 9, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* ATF Adjunct Instructor Data Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6140.3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. *Other:* None. *Abstract:* The form will be used to collect the necessary information regarding the prospective instructor's experience and qualifications, and whether he or she meets the minimum requirements in order to teach ATF courses. The information is necessary in order for ATF programs to verify and defend the qualifications of instructor personnel.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 20 respondents who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 10 total burden hours associated with this collection.

If Additional Information is Required Contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Room 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: November 3, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–28234 Filed 11–8–10; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–145)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 6,918,970 High Strength Aluminum Alloy for High Temperature Applications, NASA Case No. MFS–31828–1, to Allied Metal Company having its principal place of business in Chicago, IL. The fields of use may be limited to the manufacture of aluminum alloy ingots. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED10, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Dated: November 4, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–28279 Filed 11–8–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Generic Survey Clearance for the Directorate of Education and Human Resources (EHR)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by January 10, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22030, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: EHR Generic Clearance.

OMB Approval Number: 3145–0136.

Expiration Date of Approval: March 31, 2011.

Abstract: The National Science Foundation (NSF) requests renewal of program accountability and communication data collections (*e.g.,* surveys, face-to-face and telephone interviews, observations, and focus groups) that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (*e.g.,* pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

At the request of OMB an EHR Generic Clearance was established in 1995 to integrate management, monitoring, and evaluation information pertaining to the NSF's Education and Training (ET) portfolio in response to the Government Performance and Results Acts (GPRA) of 1993. Under this generic survey clearance (OMB 3145–0136), data from the NSF administrative databases are incorporated with findings gathered through initiative-, divisional-, and program-specific data collections. The scope of the EHR Generic Clearance primarily covers

descriptive information gathered from education and training projects that are funded by NSF. Most programs subject to EHR Generic data collection are funded by the EHR Directorate, but some are funded in whole or in part by disciplinary directorates or multi-disciplinary or cross-cutting programs. Since 2001 in accordance with OMB's Terms of Clearance (TOC), NSF primarily uses the data from the EHR Generic Clearance for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), and the NSF's Office of the Inspector General.

OMB has limited the collection to three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts).

Use of the Information: This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0648.*

Since the EHR Generic Clearance research is primarily used for accountability purposes, including responding from queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under the EHR Clearance serve as baseline data for separate research and evaluation studies.

In order to conduct program- or portfolio-level evaluations, however, both experimental and quasi-experimental evaluation research studies on STEM education interventions require researchers to identify individual-level and organization- or project-level control and treatment groups or comparison groups. NSF-funded contract or grantee researchers and evaluators in part may identify control, comparison, or treatment groups for NSF's ET portfolio using some of the descriptive data gathered through OMB 3145–0136 to conduct well-designed, rigorous research and portfolio evaluation studies.

In accordance with the 2001, 2005, and 2008 OMB TOCs, NSF requests separate stand-alone clearance (and separately announces for comment in the **Federal Register**) any program or portfolio research or evaluation. Two examples of third-party evaluations that used EHR OMB 3145–0136 data to inform study design are: OMB No. 3145–0187 (Expiring 8/2011) Evaluation of the NSF's Graduate STEM Fellows in K–12 Education (GK–12) Program and OMB No. 3145–0182 (Expiring 3/2011) Evaluation of the NSF's Integrative Graduate Education and Research Traineeship (IGERT) Program: Follow-up Study of IGERT Graduates, both conducted by Abt Associates.

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or Tribal government.

Number of Respondents: 8,494.

Burden of the Public: The total estimate for this collection is 65,868 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is between 1.5 and 72 hours per "respondent," depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants.

Dated: November 3, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–28210 Filed 11–8–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of permit applications received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 9, 2010. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2011–006

1. *Applicant:* Diane Marie McKnight, INSTAAR, 1560 30th Street, Boulder, CO 80309.

Activity for Which Permit Is Requested

Enter into Antarctic Specially Protected Area. The applicant plans to enter the Canada Glacier, Lake Fryxell (ASPA #131) to continue operation of a previously installed, continuously recording stream gauge station, perform maintenance, conduct stream flow measurements and collect water quality samples near the stream gauge site. The applicant will also collect water quality samples of the melt-water of the Canada Glacier and along the length of the stream to study in-stream biogeochemical processes. Samples of the microbial mats and mosses will also be collected for study. LIDAR and other survey and monitoring techniques may be used to detect changes in the stream bed and algal mat distribution over time.

Location: Canada Glacier, Lake Fryxell, Taylor Valley (ASPA 131)

Dates: February 28, 2011 to February 28, 2016

Permit Application No. 2011–022.

2. *Applicant:* Adam Kustka, Department of Earth & Environmental Sciences, Rutgers University, 101 Warren Street, Newark, NJ 07102.

Activity for Which Permit Is Requested

Export from USA, and Introduce Non-indigenous Species into Antarctica. The applicant is investigating the role of modified circumpolar deep water on supplying Fe to the surface ocean and how this Fe supply impacts initial CO^2 sequestration and how it impacts the composition of the phytoplankton community assemblage. To trace the fate and recycling of organic carbon and Fe that has been incorporated into phytoplankton, they will use cell lysates labeled with the radioisotopes of C or Fe. In complementary experiments, lysates will also be labeled with the stable isotope 13C. These lysates will be generated in the university lab using cultures of a centric diatom (*Thhalassiosira weissflogii*) and a temperate haptophyte (*Phaeocystic globosa*)—species that cannot tolerate seawater temperatures in Antarctica. The lysates will be shipped from the University via New Zealand and used onboard the research vessel, *Nathaniel B. Palmer,* in the Ross Sea. Once experiments are concluded, the lysates will be placed in the radioactive waste stream and not released to the environment.

Location: Ross Sea, Antarctica

Dates: January 1, 2011 to March 1, 2011

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010–28202 Filed 11–8–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 1, 2010 and October 5, 2010, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued on November 1, 2010 and November 3, 2010, respectively, to:

Robert W. Sanders ...	Permit No. 2011–019.
Yu-Ping Chin	Permit No. 2011–018.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2010–28209 Filed 11–8–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0335]

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission, NRC, or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s)

whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html*. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at

http://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: July 22, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would approve the proposed Cyber Security Plan and implementation schedule and would revise the existing Facility Operating License (FOL) Physical Protection License Condition to require the licensee to fully implement and maintain in effect all provisions of the Commission-approved Cyber Security Plan as required by 10 CFR 73.54.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment incorporates a new requirement in the Facility Operating License (FOL) to implement and maintain a Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the FOL itself does not involve any modifications to the safety-related structures, systems, or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The addition of the Cyber Security Plan to the Physical Security Plan will not alter previously evaluated Updated Final Safety Analysis Report (UFSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the FOL do not result in the need of any new or different FSAR [Final Safety Analysis Report] design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: July 12, 2010, as supplemented by a letter dated August 5, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The licensee proposed an amendment to the Facility Operating License for KPS. In the same amendment request letter, sent under Dominion Resources Services, Inc. letterhead, Millstone Power Station Units 2 and 3; North Anna Power Station Units 1 and 2; and Surry Power Station Units 1 and 2 submitted amendment requests pertaining to their Cyber Security Plans. This notice only addresses the application as it pertains to KPS. The licensee requested NRC approval of the KPS Cyber Security Plan, provided a proposed implementation schedule, and proposed to add a sentence to License Condition 2.C.(4), "Physical Protection," of KPS Facility Operating License (FOL) DPR–43 that would affirm when the licensee would fully implement and maintain in effect all provisions of the Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's NHSC analysis and has prepared its own as follows:

Criterion 1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Plan establishes the licensing basis for the Cyber Security Program for the Sites. The Plan establishes how to achieve high assurance that specified nuclear power plant digital computer and communication systems, networks and functions are adequately protected against cyber attacks up to and including the design basis threat.

Part one of the proposed changes is designed to achieve high assurance that the systems are protected from cyber attacks. The Plan describes how plant modifications that involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the requirement are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated. The proposed change implements a Cyber Security Plan as a requirement not previously formally addressed. As such, the proposed Plan provides a significant enhancement to cyber security where no requirement existed before.

The second part of the proposed changes adds a sentence to the existing facility license conditions for Physical Protection. These changes are administrative and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related structures, systems and components (SSCs) are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the FOL do not result in the need of any new or different design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Robert J. Pascarelli.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: July 22, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed

amendment to the Facility operating License (FOL) includes: (1) The proposed Perry Nuclear Power Plant (PNPP) Unit No. 1 Cyber Security Plan, (2) an implementation schedule, and (3) a proposed sentence to be added to the existing FOL Physical Protection license condition 2.E to require the FirstEnergy Nuclear Operating Company (FENOC, the licensee) to fully implement and maintain in effect all provisions of the Commission approved cyber plan as required by 10 CFR 73.54. **Federal Register** notice issued the final rule that amended 10 CFR Part 73. The regulations in 10 CFR 73.54, "Protection of digital computer and communication systems and networks," establish the requirements for a cyber security program. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under 10 CFR Part 50 to submit a cyber security plan that satisfies the requirements of the rule. Each submittal must include a proposed implementation schedule and implementation of the licensee's cyber security program must be consistent with the approved schedule. The background for this application is addressed by the NRC's Notice of Availability, **Federal Register** Notice, Final Rule 10 CFR Part 73, Power Reactor Security Requirements, published on March 27, 2009 (74 FR 13926).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed change is required by 10 CFR 73.54 and includes three parts. The first part is the submittal of the Plan for NRC review and approval. The Plan provides a description of how the requirements of the rule will be implemented at the PNPP. The Plan establishes the licensing basis for the FENOC cyber security program for the PNPP. The Plan establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions,

2. Security functions,

3. Emergency preparedness functions including offsite communications, and

4. Support systems and equipment which if compromised, would adversely impact safety, security, or emergency preparedness functions.

Part one of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks. The Plan itself does not require any plant modifications. However, the Plan does describe how plant modifications which involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat as defined in the rule. The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, affect the function of plant systems, or affect the manner in which systems are operated. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated.

The second part of the proposed change is an implementation schedule. The third part adds a sentence to the existing FOL license condition 2.E for Physical Protection. Both of these changes are administrative and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed change is required by 10 CFR 73.54 and includes three parts. The first part is the submittal of the Plan for NRC review and approval. The Plan provides a description of how the requirements of the rule will be implemented at the PNPP. The Plan establishes the licensing basis for the FENOC cyber security program for the PNPP. The Plan establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions,

2. Security functions,

3. Emergency preparedness functions including offsite communications, and

4. Support systems and equipment which if compromised, would adversely impact safety, security, or emergency preparedness functions.

Part one of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks. The Plan itself does not require any plant modifications. However, the Plan does describe how plant modifications which involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat defined in the rule. The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, affect the function of plant systems, or affect the manner in which systems are operated. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks and does not create the possibility of a new or different kind of accident from any previously evaluated.

The second part of the proposed change is an implementation schedule. The third part adds a sentence to the existing FOL license condition 2.E for Physical Protection. Both of these changes are administrative and do not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety

The proposed change is required by 10 CFR 73.54 and includes three parts. The first part is the submittal of the Plan for NRC review and approval. The Plan provides a description of how the requirements of the rule will be implemented at the PNPP. The Plan establishes the licensing basis for the FENOC cyber security program for the PNPP. The Plan establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions,

2. Security functions,

3. Emergency preparedness functions including offsite communications, and

4. Support systems and equipment which if compromised, would adversely impact safety, security, or emergency preparedness functions.

Part one of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety limits specified in the Technical Specifications, methods of evaluation that establish design basis or change Updated Final Safety Analysis. Because there is no change to these established safety margins, the proposed change does not involve a significant reduction in a margin of safety.

The second part of the proposed change is an implementation schedule. The third part adds a sentence to the existing FOL license condition 2.E for Physical Protection. Both of these changes are administrative and do not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Robert D. Carlson.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 14, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The licensee proposes an amendment to the Facility Operating License for the Duane Arnold Energy Center. The licensee requests NRC approval of the NextEra Energy Duane Arnold Cyber Security Plan, provides an implementation schedule, and adds a sentence to the existing Operation License Physical Protection license condition to require NextEra Energy Duane Arnold to fully implement and maintain in effect all provisions of the Commission-approved Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The licensee's NSHC analysis, addressing each issue described above, is reproduced below:

Criterion 1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment incorporates a new requirement in the Facility Operating License to implement and maintain a Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the Facility Operating License itself does not involve any modifications to the safety-related structures, systems or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The Cyber Security Plan will not alter previously evaluated Final Safety Analysis Report (FSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the Facility Operating License do not result in the need for any new or different FSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment. Therefore, the proposed amendment does not create a possibility for an accident of a new or different type than those previously evaluated.

Criterion 3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. R.E. Helfrich, Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: July 22, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would approve the proposed Cyber Security Plan and implementation schedule and would revise the existing Facility Operating License Physical Protection License Condition to require the licensee to fully implement and maintain in effect all provisions of the Commission-approved Cyber Security Plan as required by 10 CFR 73.54.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment incorporates a new requirement in the Facility Operating License to implement and maintain the Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the Facility Operating License itself does not involve any modifications to the safety-related structures, systems, or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The implementation and incorporation of the Cyber Security Plan into the Facility Operating License will not alter previously evaluated Updated Final Safety Analysis Report (UFSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation

of 10 CFR 73.54 and the inclusion of the Cyber Security Plan in the Facility Operating License do not result in the need of any new or different UFSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3. Do the proposed amendments involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated.

The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 27, 2010.

Description of amendment request: This amendments request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would approve the STP Nuclear Operating Company's request for approval of South Texas Project, Units 1 and 2 Cyber Security Plan in accordance with 10 CFR 73.54. The amendments would also revise Section 2.F of the Facility Operating Licenses (FOLs) numbered NPF–76 and NPF–80 to incorporate the requirement to fully implement and maintain in effect all provisions of the Commission-approved cyber security plan. The requirements of 10 CFR 73.54, "Protection of digital computer and communication systems and networks," establish the requirements for a cyber security program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change incorporates a new requirement in the FOL to implement and maintain the Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the FOL itself does not involve any modifications to the safety related structures, systems or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The implementation and incorporation of the Cyber Security Plan into the FOL will not alter previously evaluated Updated Final Safety Analysis Report (UFSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of the Cyber Security Plan in the FOL do not result in the need of any new or different UFSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: August 12, 2010.

Description of amendment request: The amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would approve the Union Electric Company's request for approval of the Callaway Plant, Unit 1 Cyber Security Plan in accordance with 10 CFR 73.54. The amendments would also revise Section 2.E of the Facility Operating License (FOL) numbered NPF–30 to incorporate the provisions to implement and maintain in effect all provisions of the Commission-approved cyber security plan. The requirements of 10

CFR 73.54, "Protection of digital computer and communication systems and networks," establish the requirements for a cyber security program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed change incorporates a new requirement in the Facility Operating License to implement and maintain the Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the Facility Operating License itself does not involve any modifications to the safety-related structures, systems or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The implementation and incorporation of the Cyber Security Plan into the Facility Operating License will not alter previously evaluated Final Safety Analysis Report (FSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated

This proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of the Cyber Security Plan in the Facility Operating License do not result in the need of any new or different FSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is:

U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. *Review of Grants of Access.* A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 1st day of November 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
> A + 60	Decision on contention admission.

[FR Doc. 2010–28129 Filed 11–8–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of November 8, 15, 22, 29, December 6, 13, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 8, 2010

There are no meetings scheduled for the week of November 8, 2010.

Week of November 15, 2010—Tentative

There are no meetings scheduled for the week of November 15, 2010.

Week of November 22, 2010—Tentative

There are no meetings scheduled for the week of November 22, 2010.

Week of November 29, 2010—Tentative

Tuesday, November 30, 2010

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

Week of December 6, 2010—Tentative

There are no meetings scheduled for the week of December 6, 2010.

Week of December 13, 2010—Tentative

Thursday, December 16, 2010.

2 p.m. Briefing on Construction Reactor Oversight Program (cROP) (Public Meeting). (Contact: Aida Rivera-Varona, 301–415–4001).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: November 4, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–28393 Filed 11–5–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link

http://www.nrc.gov/reading-rm.html at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E–Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license application follows.

NRC Import License Application

Description of Application

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Country of origin
Oregon Specialty Metals. August 30, 2010 August 31, 2010 IW028 11005875	Radioactive Waste consisting of contaminated mixed metals, filter cake, spent metal shot, trash and protective clothing exported under NRC export licenses XW003 and XW007.	186,000 kilograms of materials contaminated with 2.613 kilograms of U–235 contained in 58.575 kilograms uranium.	Return of U.S. origin metals to Alaron Corporation in Wampum, PA for processing and then to Energy Solutions, LLC site in Clive, Utah for management and disposal.	Canada (originally U.S.).

Dated this 26th day of October 2010 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2010–28258 Filed 11–8–10; 8:45 am]

BILLING CODE 7590–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Agenda and Notice of Partially Closed Meeting of the Recovery Independent Advisory Panel

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice of partially closed meeting.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Recovery Act), and the Federal Advisory Committee Act of 1972 (FACA), the Recovery Accountability and Transparency Board's (Board) Recovery Independent Advisory Panel (RIAP) will meet as indicated below. Notice of this meeting is required under Section 10(a)(2) of FACA. This notice is intended to notify the general public of their opportunity to attend the open portion of the meeting.

DATES: The open portion of the RIAP meeting will be held on Monday, November 22, 2010, from 10 a.m. to 3 p.m.

ADDRESSES: The Ritz-Carlton, 2401 East Camelback Road, Phoenix, AZ 85016.

FOR FURTHER INFORMATION CONTACT: Glen Walker, Executive Director, Recovery Independent Advisory Panel, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006; Telephone 202–254–7900.

SUPPLEMENTARY INFORMATION: Pursuant to Section 1543 of the Recovery Act, the RIAP is charged with making recommendations to the Board on actions the Board could take to prevent fraud, waste, and abuse of Recovery Act funds. The purpose of the November 22, 2010 meeting is to allow the RIAP to have an open dialogue, with input from the public, on issues relating to fraud, waste, and abuse of Recovery Act funds. More specifically, the RIAP is interested in obtaining input regarding the following matters:

- Actions the Board can take to prevent fraud, waste, and abuse;
- Transparency of entitlements and tax benefits funded by the Recovery Act;
- The public's experience with obtaining information from Recovery.gov and how that experience can be improved; and
- Random sampling as a tool for detecting fraud, waste, and abuse.

In keeping with FACA procedures, members of the public are invited to provide comments to the RIAP. The preference of the RIAP is to have members of the public provide written comments addressing any of the matters listed above no later than November 12, 2010. There will be limited space for this meeting; therefore, members of the public who have submitted written statements addressing matters outlined above will be given priority in attending this meeting and speaking to the RIAP. The next highest priority for attending the meeting and speaking to the RIAP will be those individuals who have signed up in advance by submitting their names via e-mail to the RIAP in advance of the meeting. Members of the public who have submitted written comments and/or who have signed up in advance will be given priority to attend the meeting and be heard first in the order in which their written statements and/or sign-up e-mails were received. Other members of the public will be heard in the order in which they sign up at the beginning of the meeting, space permitting. A time limit will be placed on those members of the public wishing to speak at the meeting, with time allocated in accordance with the number of people who have signed up indicating a desire to speak to the RIAP. The RIAP will make every effort to hear the views of all interested persons. The

Chairperson of the RIAP is empowered to conduct the meeting in a fashion that will, to the Chairperson's judgment, facilitate the orderly conduct of business. You may submit written comments by mail to 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. "RIAP comments" should be written on the envelope. Persons wishing to e-mail their written comments and/or sign up in advance to speak to the RIAP at the meeting should send their written comments and/or names to *panel@ratb.gov* and write "November 22, 2010 RIAP public comment" in the Subject line.

There will be a closed meeting, under the authority of Section 10(d) of FACA and under exemption (7) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 92–463), that will be held prior to the open meeting from 9 a.m. to 9:30 a.m. During the closed portion of the meeting there will be a discussion that would disclose investigative techniques and procedures. A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of 5 U.S.C. 552b(c) will be available to the public within fourteen days of the meeting. Records will be kept of all RIAP proceedings and will be available for public inspection on *http://www.recovery.gov.*

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2010–28243 Filed 11–8–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63235; File No. SR–CBOE–2010–099]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Short Sell Order Handling

November 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Stock Exchange, LLC's ("CBSX," the CBOE's stock trading facility) rules to describe the manner in which the CBSX System[5] will handle short sell orders in relation to Rule 201 of Regulation SHO,[6] and CBOE's rules to include order marking requirements for stock-option orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

Rule 201 of Regulation SHO under the Act[7] sets forth a short sale-related circuit breaker that, if triggered, will impose a restriction on the prices at which NMS stocks[8] may be sold short. In anticipation of the upcoming November 10, 2010 compliance date for Rule 201,[9] the Exchange is proposing to amend CBSX's rules to describe the manner in which the CBSX System will handle short sell orders when a circuit breaker is triggered under Rule 201 of Regulation SHO.

In particular, the Exchange is proposing to adopt Interpretation and Policy .02 to its Rule 51.8, *Types of Orders Handled,* to provide that orders in equity securities that are submitted to the CBSX System must be marked "long," "short," or "short exempt" in compliance with Regulation SHO.[10] The Interpretation and Policy will also provide that, if a short sale-related circuit breaker is triggered under Regulation SHO, orders marked "short" will be handled by the CBSX System as follows: First, short sell orders that are resting in the CBSX Book[11] at the time a circuit breaker is triggered will be permitted to continue resting and/or execute. The Exchange believes this handling of resting short sell orders is consistent with Rule 201 because resting orders by definition are priced above the National Best Bid.[12] Second, short sell orders that are received by the CBSX System after the time a circuit breaker is triggered that are priced above the National Best Bid will be permitted to rest and/or execute. The Exchange believes this handling of incoming short sell orders is consistent with Rule 201 because the orders are priced above the National Best Bid.[13] Third, short sell orders that are received by the CBSX System after the time a circuit breaker is triggered that are priced at or below

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The "CBSX System" means the electronic system which performs the functions set out in the CBSX rules including controlling, monitoring, and recording trading by CBSX Traders through CBSX Workstations and trading between CBSX Traders. *See* Rule 50.1(a). A "CBSX Trader" means an individual who or organization which has the right to trade on CBSX. *See* Rules 50.1(f) and 50.3. A "CBSX Workstation" means a computer connected to CBSX for the purposes of trading pursuant to the CBSX rules. *See* Rule 50.1(d).

[6] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO, 17 CFR 242.200(g), was amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of November 10, 2010.

[7] *Id.*

[8] 17 CFR 242.201(a)(1).

[9] *See supra* note 6.

[10] 17 CFR 242.200(g).

[11] The "CBSX Book" means all unexecuted orders currently held by the CBSX System. *See* Rule 50.1(c). The Exchange notes that additional size cannot be added to an order resting in the CBSX Book. The Exchange also notes that it currently does not make available any resting order types that are to be completely un-displayed in the CBSX Book. To the extent the Exchange may determine to make available such an un-displayed resting order type, it would be subject to a rule filing submitted pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b).

[12] 17 CFR 242.201(b)(1).

[13] *Id.*

the National Best Bid will be rejected/cancelled by the CBSX System. The Exchange believes this handling of incoming short sell orders is consistent with Rule 201 because the orders are not priced above the National Best Bid.[14]

The Exchange notes that, under these procedures, a reserve sell order[15] that is marked "short" will be handled the same as any other sell order marked "short." Thus, an incoming reserve sell order that is received by the CBSX System after the time a circuit breaker is triggered that is marked "short" and that is priced at or below the National Best Bid will be rejected/cancelled by the CBSX System. An incoming reserve sell order that is received by the CBSX System after the time a circuit breaker is triggered that is marked "short" and that is priced above the National Best Bid will be permitted to rest and/or execute. The Exchange also notes that the entire size of a reserve sell order that is marked "short" and resting in the CBSX Book—both the displayed portion and the reserve portion at the same price that is not displayed—will be permitted to rest and/or execute. This handling will apply to reserve orders resting in the CBSX Book at the time a circuit breaker is triggered or to incoming reserve orders that rest in the CBSX Book after a circuit breaker is triggered. The Exchange believes this handling of reserve orders marked "short" is consistent with Rule 201 because resting reserve orders that are marked "short" by definition are priced above the National Best Bid at the time of initial display.[16]

Sell orders marked "short exempt" will be permitted to rest and/or execute without regard to when the order is received or whether the order is priced above, at or below the National Best Bid. This handling of sell orders marked "short exempt" would be applied by the CBSX System at all times—without regard to whether a circuit breaker is triggered. The Exchange believes this handling by CBSX of sell orders marked "short exempt" is consistent with Rule 201, which permits the execution or display of a short sell order in an NMS stock marked "short exempt" without regard to whether the order is at a price that is less than or equal to the current National Best Bid.[17]

The Exchange is also proposing to amend Interpretation and Policy .06 to its Rule 6.53C, *Complex Orders on the Hybrid System,* to include an order marking requirement for stock-option orders. In particular, the Exchange is proposing to provide that, if the stock leg of a stock-option order submitted to CBOE's electronic complex order book (referred to in the rules as "COB")[18] or electronic complex order request for response auction (referred to in the rules as "COA")[19] is a sell order, then the stock leg must be marked "long, "short," or "short exempt" in compliance with Regulation SHO.[20]

Finally, the Exchange is proposing to make non-substantive technical updates to its Rule 53.5, "*Long*" *and* "*Short*" *Sales.* In particular, the Exchange is proposing to change the title of the rule to "*'Long,' 'Short' and 'Short Exempt' Sales*" and to delete an outdated reference to SEC Rule 10a–1 (which no longer exists and has been superseded by Regulation SHO).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and, in particular, furthers the objectives of Section 6(b)(5) of the Act,[22] which requires that an exchange have rules that are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed change will provide clarity on the short sell order handling procedures that the CBSX System will apply when a short sale-related circuit breaker is triggered under Rule 201 of Regulation SHO in a manner that the Exchange believes is consistent with Regulation SHO.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[25] However, Rule 19b–4(f)(6)[26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow updating of its rules before the November 10, 2010 compliance date of the amendments to Rule 200(g) and 201 of Regulation SHO[27] and thereby provide clarity on the short sell order handling procedures that the CBSX System will apply when a short sale-related circuit breaker is triggered under Rule 201 of Regulation SHO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the waiver will provide clarity to market participants that trade on CBSX System on the handling of certain orders in light of the amendments to Regulation SHO.[28] The Commission also believes that the proposed rule change does not raise any new or novel issues. Accordingly, the Commission designates the proposed rule change

[14] *Id.*

[15] A "reserve order" is a limit order with a portion of the size that is to be displayed and with a reserve portion of the size at the same price that is not to be displayed, but is to be used to refresh the displayed size when the displayed size is executed in full. *See* Rule 51.8(o).

[16] 17 CFR 242.201(b)(1)(iii)(A).

[17] *See* Rule 201(b)(1)(iii)(B) of Regulation SHO, 17 CFR 242.201(b)(1)(iii)(B). The Exchange notes that a broker or dealer may mark a sell order "short exempt" only if the provisions of Rule 242.201(c) or (d) are met. *See* Rule 200(g)(2) of Regulation SHO, 17 CFR 242.200(g)(2).

[18] *See* Rule 6.53C(c).

[19] *See* Rule 6.53C(d).

[20] 17 CFR 242.200(g).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). In addition, CBOE has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *Id.*

[27] 17 CFR 242.200(g); 17 CFR 242.201.

[28] *Id.*

operative upon filing with the Commission.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–099. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–099 and should be submitted on or before November 30, 2010 in the **Federal Register**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

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[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63238; File No. SR–C2–2010–008]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update Rules Based on Chicago Board Options Exchange, Inc. Rules and Recent Chicago Board Options Exchange, Inc. Rule Filings

November 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2010, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

C2 proposes to update its rules based on Chicago Board Options Exchange, Inc. ("CBOE") rules and recent CBOE rule filings. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal/crclc2rulefiling.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

In 2009, C2 was registered as a national securities exchange under Section 6 of the Exchange Act.[5] C2 is anticipated to launch on October 29, 2010. The purpose of this filing is to update the C2 rules based on rules and recent rule filings of CBOE.

First, C2 proposes to delete the definition of "Short Term Option" from Rule 1.1. The definition is not used elsewhere in the C2 Rules and is superfluous and unnecessary. The Exchange notes that CBOE Chapter V (specifically Rule 5.5(d)), which is incorporated by reference into Chapter V of the C2 Rules, defines "Short Term Option Series."

Second, C2 proposes to adopt Rule 3.13, Educational Classes, which would require Trading Permit Holders ("TPHs") and persons associated with TPHs to attend such educational classes as C2 may require from time to time. The proposed rule would also provide that failure to attend C2 mandated continuing educational classes may subject TPHs and associated persons to sanctions under the Exchange's Minor Rule Violation Plan. Any action taken by the Exchange would not preclude further disciplinary action under C2 Rules. Proposed C2 Rule 3.13 is similar to existing CBOE Rule 6.20(e).

Third, C2 proposes to add Rule 6.17, Price Check Parameters. Under the proposed rule, C2 would not automatically execute eligible orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 61152 (Dec. 10, 2009), 74 FR 66699 (Dec. 16, 2009).

that are marketable if (1) the width between the national best bid and national best offer is not within an acceptable price range (as determined by the Exchange on a series by series basis for market orders and/or marketable limit orders and announced to TPHs via Regulatory Circular), or (2) the execution would follow an initial partial execution on the Exchange and would be at a subsequent price that is not within an acceptable tick distance from the initial execution (as determined by the Exchange on a series by series and premium basis for market orders and/or marketable limit orders and announced to TPHs via Regulatory Circular).

For purposes of the proposed rule, an "acceptable price range" ("APR") shall be determined by the Exchange on a class-by-class basis and shall be no less than: $0.375 between the bid and offer for each option contract for which the bid is less than $2, $0.60 where the bid is at least $2 but does not exceed $5, $0.75 where the bid is more than $5 but does not exceed $10, $1.20 where the bid is more than $10 but does not exceed $20, and $1.50 where the bid is more than $20. An "acceptable tick distance" ("ATD") shall be no less than 2 minimum increment ticks. Under the proposed rule, the senior official in the C2 Help Desk may grant intra-day relief by widening the APR and ATD for one or more option series. Notification of intra-day relief will be announced via electronic message to TPHs that request to receive such messages. If an execution is suspended because the APR has not been met, the order will be cancelled. If an execution is suspended because executing the remaining portion of an order would exceed the ATD, then such remaining portion will be cancelled.

Proposed Rule 6.17 is similar to existing CBOE Rule 6.13(b)(vi), except that provisions in the CBOE rule related to the handling of orders in open outcry have not been incorporated.

Fourth, C2 proposes to adopt Rule 6.37, Reporting of Trade Information, to require TPHs to file with the Exchange trade information in such form as may be prescribed by the Exchange covering each Exchange transaction during each business day in order to allow the Exchange to properly match and clear trades. The trade information shall show for each transaction (1) The identity of the Clearing Participant, (2) the underlying security, (3) the exercise price, (4) the expiration month, (5) the number of option contracts, (6) the premium per unit, (7) the identity of the executing broker representing the Clearing Participants, (8) whether a purchase or a writing transaction, (9) except for a transaction executed by or for a Market-Maker, whether an opening or closing transaction, (10) the identity of the account of the Clearing Participant in which the transaction was effected, (11) the time of purchase or sale, (12) whether a put or call, and (13) such other information as may be required by the Exchange. Proposed Rule 6.37 is similar to existing CBOE Rule 6.51(d), except that trade information in the CBOE rule related to the reporting of open outcry transactions has not been incorporated.

Fifth, C2 proposes to amend Rule 6.51, Automated Improvement Mechanism ("AIM"), to extend until July 18, 2011 the Pilot Period during which there will be no minimum size requirement for orders to be eligible for the AIM auction. This proposed amendment to extend the pilot program is based on a recent CBOE rule filing.[6]

Lastly, C2 also proposes to amend Chapter 24, Index Options. Chapter 24 of the C2 rules incorporates by reference CBOE Chapter XXIV, with the exception of certain specified rules contained in CBOE Chapter XXIV. C2 proposes to amend the list of excepted rules in two respects. We are inserting a reference to provide that CBOE Rule 24.15, Automatic Execution of Index Options, does not apply to C2. CBOE Rule 24.15 addresses the applicability of certain CBOE automatic execution rules to index options. The rules are inapplicable to the operations of C2, and thus the rule itself should not apply to C2. We are also deleting a reference to CBOE Rule 24.16, Nullification and Adjustment of Transactions in Index Options, Options on ETFs, and Options on HOLDRS, because that rule has been deleted from the CBOE rules and thus the cross-reference is outdated and no longer necessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")[7] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Updating the C2 rules to keep them in line with those of CBOE (as relevant) provides for consistency in rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

[6] *See* Securities Exchange Act Release No. 34–62–522 (July 16, 2010), 75 FR 43596 (July 26, 2010) (SR–CBOE–2010–067).

[7] 15 U.S.C. 78s(b)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. C2 has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

public interest.[13] The Commission notes that the proposal is designed to conform C2's rules to the rules of the CBOE, and does not raise any new regulatory issues. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2010–008 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–C2–2010–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2010–008 and should be submitted on or before November 30, 2010 in the **Federal Register**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28246 Filed 11–8–10; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63239; File No. SR–NASDAQ–2010–137]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend IM–5101–2 To Provide Acquisition Companies the Option To Hold a Tender Offer in Lieu of a Shareholder Vote on a Proposed Acquisition

November 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to provide acquisition companies an option to hold a tender offer in lieu of a shareholder vote on a proposed acquisition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Proposed new language is in *italics*; proposed deletions are in [brackets].[3]

IM–5101–2. Listing of Companies Whose Business Plan is to Complete One or More Acquisitions

Generally, Nasdaq will not permit the initial or continued listing of a Company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq will permit the listing if the Company meets all applicable initial listing requirements, as well as the conditions described below.

(a)–(c) No change.

(d) Until the Company has satisfied the condition in paragraph (b) above, *if the Company holds a shareholder vote on a business combination for which the Company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act in advance of the shareholder meeting, the*[each] business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered. *If a shareholder vote on the business combination is held,*

[(e) Until the Company has satisfied the condition in paragraph (b) above,] public Shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. A Company may establish a limit (set no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any Shareholder, together with any affiliate of such Shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Act), may exercise such conversion rights. For purposes of this paragraph [(e)] *(d),* public Shareholder excludes officers and directors of the Company, the Company's sponsor, the founding Shareholders of the Company, and any Family Member or affiliate of any of the foregoing persons*, or the beneficial holder of more than 10% of the total shares outstanding.*

Until the Company completes a business combination where all conditions in paragraph (b) above are met, the Company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing following a business combination or does not comply with one of

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

the requirements set forth above, Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.

(e) Until the Company has satisfied the condition in paragraph (b) above, if a shareholder vote on the business combination is not held for which the Company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act, the Company must provide all Shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e–4 and Regulation 14E under the Act, which regulate issuer tender offers. The Company must file tender offer documents with the Commission containing substantially the same financial and other information about the business combination and the redemption rights as would be required under Regulation 14A of the Act, which regulates the solicitation of proxies. Until the Company completes a business combination where all conditions in paragraph (b) above are met, the Company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2009, Nasdaq adopted rules to permit the listing of companies whose business plan was to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time ("Acquisition Companies" or "SPACs").[4] These listing requirements included additional protections designed to protect investors from certain risks unique to this type of company, including that the Acquisition Company obtain a vote of shareholders prior to consummating any acquisition and offer shareholders voting against the acquisition the ability to redeem their shares in exchange for a pro rata share of the cash held by the Acquisition Company.[5] Similar protections have been voluntarily adopted by other Acquisition Companies that have not listed on Nasdaq.

As a result of the required vote, in a number of cases, hedge funds and other activist investors acquired an interest in an Acquisition Company and used their ability to vote against a proposed acquisition as leverage to obtain additional consideration not available to other shareholders. For example, they may negotiate the sale of their stake to an affiliate of the Acquisition Company's management for a price higher than their pro rata share of the deposit account. In other cases, the withheld votes caused the proposed acquisition to fail altogether. In order to prevent this type of "greenmail," recent Acquisition Companies, which went public and did not list on an exchange, adopted a modified structure under which they would not seek a vote on the acquisition, unless otherwise required by law. Instead, these Acquisition Companies would conduct a redemption offer pursuant to Rule 13e–4 and Regulation 14E under the Act after the public announcement and prior to the completion of the business combination, enabling shareholders who are opposed to the transaction to tender their shares in exchange for a pro rata share of the cash held by the Acquisition Company. This is the same outcome available to public Shareholders who vote against the acquisition pursuant to Nasdaq's existing rule.

Under this new alternative, shareholders would still maintain the ability to "vote with their feet" if they oppose a proposed transaction and would, as just noted, also obtain their pro rata share of the Acquisition Company's cash through the tender offer pursuant to Rule 13e–4 and Regulation 14E under the Act. As such, Nasdaq believes that the protections provided by the existing rule would continue to be available. Further, this tender offer alternative would help prevent shareholders who support the acquisition and elect to retain their shares from being denied the benefits of the transaction by the actions of the activist investors. Accordingly, Nasdaq proposes to modify IM–5201–2 to allow an Acquisition Company to conduct a tender offer for all shares of all Shareholders[6] in exchange for a pro rata share of the cash held in trust by the Acquisition Company in compliance with Rule 13e–4 and Regulation 14E under the Act instead of soliciting a shareholder vote.

In addition, the proposed rule change would require an Acquisition Company that is not subject to the Commission's proxy rules to conduct a tender offer for shares in exchange for a pro rata share of the cash held in trust by the Acquisition Company in compliance with Rule 13e–4 and Regulation 14E under the Act and provide information similar to that required by the Commission's proxy rules, even if the Acquisition Company seeks a shareholder vote. This change will assure that investors, in all cases, get comparable information about the proposed transaction.

Last, Nasdaq is amending paragraph (d) of IM–5101–2 to include within the definition of "public Shareholder," for purposes of the paragraph, the beneficial holder of more than 10% of the total shares outstanding. The term "public Shareholder" was meant to closely mirror the defined term "Public Holders," but to also include Acquisition Company-specific classifications as well. Public Holders is defined by the Listing Rules as holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.[7] Accordingly, Nasdaq is making the rule clear by adding language consistent with the definition of Public Holders.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the

[4] IM–5101–2.

[5] The Listing Rules also require that at least 90% of the gross proceeds from the SPAC's initial public offering and any concurrent sale of equity securities must be deposited in a trust account; that within 36 months of the effectiveness of the SPAC's IPO registration statement, the SPAC must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account; and, that each business combination must be approved by a majority of the SPAC's independent directors.

[6] The term "Shareholder" is defined broadly by Rule 5005(a)(37) as "a record or beneficial owner of a security listed or applying to list."

[7] Rule 5005(a)(34).

[8] 15 U.S.C. 78f.

Act,[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these requirements in that it provides an alternative mechanism for an acquisition vehicle to complete a transaction in a manner that minimizes the disruptive effect of certain shareholders, while maintaining protections which are designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–NASDAQ–2010–137 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–137. 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–NASDAQ–2010–137 and should be submitted on or before November 30, 2010 in the **Federal Register.**

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28247 Filed 11–8–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12353 and #12354]

North Carolina Disaster Number NC–00030

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1942–DR), dated 10/14/2010.

Incident: Severe Storms, Flooding, and Straight-line Winds associated with remnants of Tropical Storm Nicole.

Incident Period: 09/27/2010 through 10/01/2010.

DATES: *Effective Date:* 11/01/2010.

Physical Loan Application Deadline Date: 12/13/2010.

EIDL Loan Application Deadline Date: 07/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 10/14/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (*Physical Damage and Economic Injury Loans*): Camden, Martin, New Hanover, Washington.

Contiguous Counties: (Physical Damage and Economic Injury Loans):

North Carolina: Currituck, Pasquotank.

Virginia: Chesapeake City, Suffolk City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–28200 Filed 11–8–10; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12370 and #12371]

California Disaster #CA–00160

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 11/02/2010.

Incident: Glenview Explosion and Fire.

Incident Period: 09/09/2010.

DATES: *Effective Date:* 11/02/2010.

Physical Loan Application Deadline Date: 01/03/2011.

Economic Injury (Eidl) Loan Application Deadline Date: 08/02/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 6155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: San Mateo.

Contiguous Counties:

California: Alameda, San Francisco, Santa Clara, Santa Cruz.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12370 4 and for economic injury is 12371 0.

The States which received an EIDL Declaration # are: California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 2, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–28201 Filed 11–8–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

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

ACTION: Notice to modify a system of records.

SUMMARY: DOT proposes to modify a system of records under the Privacy Act of 1974. The system is FAA's Aviation Records on Individuals, which is being modified to reflect: (1) One new routine use and (2) clarity to the purpose of the system. This system would not duplicate any other DOT system of records.

DATES: *Effective Date:* December 20, 2010. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: Address all comments concerning this notice to Carla Scott, Department of Transportation, Federal Aviation Administration, (AES–300), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9895.

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Departmental Privacy Officer, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue, SE., Washington, DC 20003, 202–366–1965 (telephone), *habib.azarsina@dot.gov*, (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/FAA 847

SYSTEM NAME:

Aviation Records on Individuals

SECURITY CLASSIFICATION:

Sensitive, unclassified

SYSTEM LOCATION:

• *Federal Aviation Administration (FAA), Mike Monroney Aeronautical Center (MMAC), Oklahoma City, Oklahoma 73125:* Civil Aerospace Medical Institute, Aerospace Medical Certification Division, AAM–300; Regulatory Support Division, AFS–600; and Civil Aviation Registry, Airmen Certification Branch AFS–760.

• *Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591:* Drug Abatement Division, AAM–800 or the local Compliance and Enforcement Centers of the Drug Abatement Division; Office of Security and Hazardous Materials; Flight Standards District Offices (FSDO's); Certificate Management Offices (CMO's); Certificate Management Field Offices (CMFO's); International Field Offices; Office of Security and Hazardous Materials Regional and Field Offices; FAA Regional Offices; and Chief Counsel, Regional Counsel, and Aeronautical Center Counsel Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

This system contains information on:

(1) Current certificated airmen, airmen whose certificates have expired, airmen who are deceased, airmen rejected for medical certification, airmen with special certifications, and others requiring medical certification;

(2) Air traffic controllers in air route traffic control centers, terminals, and flight service stations, and applicants for these positions;

(3) Holders of and applicants for airmen certificates, airmen seeking additional certifications or additional ratings, individuals denied certification, airmen holding inactive certificates, and airmen who have had certificates amended, modified, suspended or revoked.

(4) Persons involved in aircraft accidents and incidents, including crewmembers, passengers, persons on the ground, and witnesses.

(5) Individuals performing safety-sensitive functions under FAA's drug and alcohol testing regulations who have (a) tested positive on a Department Of Transportation (DOT)-required drug test; (b) tested 0.04 or greater for breath alcohol concentration on a DOT-required alcohol test; or (c) refused to submit to testing under a DOT-required testing program.

(6) Individuals in their commercial capacities who work for companies conducting drug and alcohol testing.

(7) Individuals who witness violations of FAA regulations.

(8) Individuals against whom FAA has initiated informal action, administrative action or legal enforcement action for violating safety

regulations and statutes or orders issued thereunder (*see generally* 49 U.S.C. 40101 *et seq.*, 44101 *et seq.*, 45101 *et seq.*, 46101 *et seq.*; FAA regulations, 14 CFR Parts 1–199; hazardous materials regulations, 49 CFR Parts 171–180; and drug and alcohol testing regulations, 49 CFR Part 40).

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name, date of birth, place of residence, mailing address, social security number, and airman certificate number.
- Records that are required to determine the physical or mental condition of an individual with respect to medical standards established by FAA.
- Records concerning drug or alcohol testing, test results, or refusals to submit to testing under a DOT-required testing program.
- Records concerning applications for certification, applications for knowledge examinations, results of knowledge tests, applications for inspection authority, certificates held, ratings, stop orders, and requests for replacement certificates.
- Reports of fatal accidents, autopsies, toxicological studies, aviation medical examiner reports, medical record printouts, nonfatal reports, injury reports, accident name cards, magnetic tape records of fatal accidents, physiological autopsy, and consulting pathologist's summary of findings.
- Records of accident investigations, preliminary notices of accident injury reports, engineering analyses, witness statements, investigators' analyses, and pictures of accident scenes.
- Records concerning safety compliance notices, informal actions, warning notices, oral or written counseling, letters of correction, letters of investigation, notices of proposed legal enforcement action, final action legal documents in enforcement actions, and correspondence of Regional Counsels, the Aeronautical Center Counsel, Chief Counsels, and others in enforcement cases.
- All records on individuals within FAA databases for which the Safety Performance Analysis System (SPAS) is a software interface (*i.e.,* inspection, surveillance, and investigation records concerning individuals, in systems including but not limited to: Accident/Incident Database System (AIDS), Air Transportation Oversight System (ATOS), Enforcement Information System (EIS), National Program Tracking and Reporting System (PTRS), National Vital Information System (VIS), and the Drug Abatement Division's Compliance and Enforcement Tracking System (CETS)).
- SPAS-related enforcement records maintained in Chief Counsel, Regional Counsel, and Aeronautical Center Counsel offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 40101, 40113, 44701–44703, 44709, 45101–106, 46301.

PURPOSE(S):

This system is the official repository of aviation records on individuals that are required to be maintained in connection with FAA's oversight and enforcement of compliance with safety regulations and statutes and orders issued thereunder or that are required to be made available, upon request, to other agencies, certain members of the public (*e.g.,* Aviation Medical Examiners), or the public at large.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Provide basic airmen certification and qualification information to the public upon request; examples of basic information include:

- The type of certificates and ratings held;
- The date, class, and restrictions of the latest physical airman's certificate number;
- The status of the airman's certificate (*i.e.,* whether it is current or has been amended, modified, suspended or revoked for any reason);
- The airman's home address, unless requested by the airman to be withheld from public disclosure per 49 U.S.C. 44703(c);
- Information relating to an individual's physical status or condition used to determine statistically the validity of FAA medical standards; and
- Information relating to an individual's eligibility for medical certification, requests for exemption from medical requirements, and requests for review of certificate denials.

(b) Use contact information to inform airmen of meetings and seminars conducted by the FAA regarding aviation safety.

(c) Disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

(d) Provide information about airmen to Federal, State, local and Tribal law enforcement agencies when engaged in an official investigation in which an airman is involved.

(e) Provide information about enforcement actions or orders issued thereunder to government agencies, the aviation industry, and the public upon request.

(f) Make records of delinquent civil penalties owed to the FAA available to the U.S. Department of the Treasury (Treasury) and the U.S. Department of Justice (DOJ) for collection pursuant to 31 U.S.C. 3711(g).

(g) Make records of effective orders against the certificates of airmen available to their employers if the airmen use the affected certificates to perform job responsibilities for those employers.

(h) Make airmen records available to users of FAA's Safety Performance Analysis System (SPAS), including the Department of Defense Commercial Airlift Division's Air Carrier Analysis Support System (ACAS) for its use in identifying safety hazards and risk areas, targeting inspection efforts for certificate holders of greatest risk, and monitoring the effectiveness of targeted oversight actions.

(i) Make records of an individual's positive drug test result, alcohol test result of 0.04 or greater breath alcohol concentration, or refusal to submit to testing required under a DOT-required testing program, available to third parties, including employers and prospective employers of such individuals. Such records will also contain the names and titles of individuals who, in their commercial capacity, administer the drug and alcohol testing programs of aviation entities.

(j) Provide information about airmen through the airmen registry certification system to the Department of Health and Human Services, Office of Child Support Enforcement, and the Federal Parent Locator Service that locates non-custodial parents who owe child support. Records in this system are used to identify airmen to the child support agencies nationwide in enforcing child support obligations, establishing paternities, establishing and modifying support orders and location of obligors. Records named within the section on Categories of Records will be retrieved using Connect: Direct through the Social Security Administration's secure environment.

(k) Make personally identifiable information about airmen available to other Federal agencies for the purpose of verifying the accuracy and completeness of medical information provided to FAA in connection with applications for airmen medical certification.

(l) Make records of past airman medical certification history data available to Aviation Medical Examiners (AMEs) on a routine basis so that AMEs

may render the best medical certification decision.

(m) Make airman, aircraft and operator record elements available to users of FAA's Skywatch system, including the Department of Defense (DoD), the Department of Homeland Security (DHS), the Department of Justice (DOJ) and other authorized government users, for their use in managing, tracking and reporting aviation-related security events.

(n) Provide information about airmen to Federal, State, local, and Tribal law enforcement, national security or homeland security agencies whenever such agencies are engaged in the performance of threat assessments affecting the safety of transportation or national security.

(0) *See* Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on lists and forms, and in computer processing storage media. Records are also stored on microfiche, on roll microfilm, and as electronic images.

RETRIEVABILITY:

Records may be retrieved by name, birth date, sex, Social Security number, airman certificate number, or other identification number of the individual on whom the records are maintained; or by medical identification number, accident number and/or incident number, and enforcement investigative report number or docket number.

SAFEGUARDS:

Manual records: Strict information handling procedures have been developed to cover the use, transmission, storage, and destination of personal data in hard copy form. The procedures are periodically reviewed for compliance with applicable laws. *Automated Processing Records in FAA–Administered Systems:* Computer processing of personal information is conducted within established FAA computer security regulations. A risk assessment of the FAA facility is performed prior to the implementation of the system of records. *Automated Processing Records in Commercial Computer Contractor-Administered Systems:* Computer programs are operated on commercial security levels and record element restrictions to prevent release of data to unauthorized parties.

RETENTION AND DISPOSAL:

Records are either destroyed or retired to the local Federal Records Center and then destroyed in accordance with the current version of FAA Order 1350.15C, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record, but ranges between 30 days and 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73125—

- *Records concerning aviation medical certification:* Manager: Aerospace Medical Certification Division, AAM–300;
- *FAA certification records and general airman records:* Manager, Airmen Certification Branch, AFS–760;
- *Records concerning aircraft accidents and incidents, inspections, surveillance, and investigations:* Manager, Aviation Data Systems Branch, AFS–620;
- *Records in FAA–Administered databases concerning administrative actions and legal enforcement actions:* Manager, Aviation Data Systems Branch, AFS–620;
- *Records pertaining to legal enforcement actions maintained in Chief Counsel, Regional Counsel, and Aeronautical Center Counsel offices:* The address of the appropriate FAA regional or field office maintaining the official agency enforcement file may be obtained from AFS–620.
- *Records pertaining to administrative actions and informal actions:* The investigating FAA field office or regional office or the Drug Abatement Division, AAM–800, or the local Compliance and Enforcement Centers of the Drug Abatement Division, as appropriate. The address of the appropriate FAA regional or field office maintaining the official agency enforcement file may be obtained from AFS–620.
- *Electronic enforcement litigation tracking system records:* Chief Counsel, Regional Counsel, and Aeronautical Center Counsel offices.
- *Accounting files:* Office of Financial Operations (AMZ) at the Aeronautical Center, and Office of Financial Management (AFM) at headquarters.
- *Aviation medical certification records from headquarters and regional files:* Medical Specialties Division at headquarters, AAM–200, or the Regional Flight Surgeon within the region where examination was conducted (visit or call the local FAA office for proper Regional Office address).
- *Drug and alcohol testing records, and records of refusals to submit to testing required under a DOT-required testing program:* Drug Abatement Division, AAM–800, or the local Compliance and Enforcement Centers of the Drug Abatement Division, as appropriate.
- *Records pertaining to security and hazardous materials:* Office of Hazardous Materials, ADG–1

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may make a request in person or in writing to the appropriate system manager. The request must include:

- Name;
- Mailing address;
- Telephone number and/or e-mail address;
- A description and, if possible, the location of the records requested; and
- A statement under penalty of perjury that the requester is the individual who he or she claims to be.

RECORDS ACCESS PROCEDURE:

Individuals who desire access to information in this system of records should make a written request to, or an appointment with, the appropriate system manager. Each request should describe the particular record to the fullest extent possible, including the subject matter of the record, and, if known, the date when it was made, where it was made, and the originating person or office. Each request must also include a statement under penalty of perjury that the requester is the individual who he or she claims to be.

PROCEDURES FOR CONTESTING RECORDS:

Individuals who desire to contest information about themselves contained in the system of records should make their request in writing, detailing the reasons why the records should be corrected, and submit the request to the attention of the FAA official responsible for the record at the address appearing in this notice. The request must include a statement under penalty of perjury that the requester is the individual who he or she claims to be.

RECORDS SOURCE CATEGORIES:

a. Medical Records are obtained from Aviation Medical Examiners (AME's), the individual to whom the records pertain, consultants, hospitals, treating or examining physicians, and Federal/State/local/Tribal Government agencies.

b. Airmen Certification Records are obtained from the individual to whom

the records pertain, FAA aviation safety inspectors, and FAA designated representatives.

c. General Aviation Accident/Incident Records and Air Carrier Incident Records are obtained from Aviation Medical Examiners, pathologists, accident investigation records, medical laboratories, Federal/State/local/Tribal law enforcement officials, and FAA employees. Data are also collected from manufacturers of aircraft and involved passengers.

d. Informal Action, Administrative Action and Legal Enforcement Records are obtained from witnesses, the Offices of the Chief Counsel, Regional Counsels and Aeronautical Center Counsel, the National Transportation Safety Board, Office of Security and Hazardous Materials (ASH) personnel, Flight Standards personnel, Office of Aviation Safety (AVS) personnel and Aeronautical Center personnel.

e. Drug and alcohol testing records and records relating to test results and refusals to submit to testing are obtained from the individual to whom the records pertain, current or previous employers, witnesses, FAA Drug Abatement inspectors, service agents providing drug and alcohol testing services for employers, and other Federal/State/local/Tribal Government agencies.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Records in this system that relate to administrative actions and legal enforcement actions are exempted from certain access and disclosure requirements of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2).

Dated: November 3, 2010.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. 2010–28237 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; System of Records Notice

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice to establish a system of records.

SUMMARY: The Department of Transportation's Office of the Secretary of Transportation (DOT/OST) proposes to establish a DOT-wide system of records under the Privacy Act of 1974 (5 U.S.C. 552a) to cover emergency contact records that are not covered by the government-wide System of Records Notice (SORN) of the Office of Personnel Management, OPM/GOVT–1. (OPM/GOVT–1 covers some but not all employee contact records that are maintained outside the Official Personnel File, does not cover agencies' emergency-program-related contact records, and does not cover contact information about contractor personnel.) The DOT-wide system, known as the Emergency Contact Records system (ECR), is more thoroughly detailed below.

DATES: Effective December 27, 2010. Written comments should be submitted on or before the effective date. DOT/OST may publish an amended SORN in light of any comments received.

ADDRESSES: Send written comments to Habib Azarsina, Departmental Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *habib.azarsina@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For privacy issues please contact: Habib Azarsina, Departmental Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *habib.azarsina@dot.gov* or (202) 366–1965.

SUPPLEMENTARY INFORMATION:

I. DOT Emergency Contact Records

This System of Records Notice covers all Privacy Act systems within DOT that maintain emergency contact records about DOT personnel (including employees, detailees and contractor personnel), other than those covered by OPM/GOVT–1. Examples of such systems include, but are not limited to, the following:

- DOT offices that administer emergency-related programs (such as emergency response, building evacuation, continuity of operations) maintain emergency contact records about emergency, mission-critical emergency, and other personnel as required for those programs.
- Supervisors and administrative assistants in offices throughout DOT maintain emergency contact records about personnel in their work units for general office administrative purposes.
- Some DOT components maintain automated systems to communicate mass notifications to all of their employees, including those who are not involved in emergency and mission-critical programs.

II. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the United States Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A "system of records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier.

The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them).

In accordance with 5 U.S.C. 552a(r), a report on the establishment of this system of records has been sent to Congress and to the Office of Management and Budget.

System Number: DOT/ALL 22

SYSTEM NAME:

Emergency Contact Records (ECR)—Not Covered by Notices of Other Agencies.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

These records are maintained at all Department of Transportation (DOT) Headquarters offices and field locations, for all DOT components. Locations are available from *http://www.dot.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Record subjects are current and former DOT employees, detailees and contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes emergency contact records not covered by OPM/GOVT–1, including but not limited to records that particular DOT offices create for emergency-related programs (such as emergency response, building evacuation and continuity of operations); that DOT supervisors and administrative assistants create for their general office administrative purposes; and that DOT components use to provide mass notifications to employees. The records contain personal contact information for employees, detailees and contractor

personnel and for their designated contacts (*e.g.,* relatives, friends), and may include the following personally-identifiable information (PII) about them:

- Personal cell phone number, home telephone number, home fax number, home address, home e-mail address;
- Information about the personnel member's skills, position, and assignment to or membership on an emergency response team (such as a continuity of operations cadre or a field incident response team), to facilitate their deployment in an emergency;
- Work location information, which may include zip code or geophysical information system data to facilitate mapping of locations where the personnel member is working;
- Special needs information such as medical conditions or mobility requirements (such information is not routinely collected but may be included if a personnel member provides it voluntarily); and
- The personnel member's relationship to any third-party contacts he or she designates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended; the Homeland Security Act of 2002 (Pub. L. 107–296), dated November 25, 2002; Executive Order 12148, Federal Emergency Management, dated July 20, 1979, as amended; Executive Order 12656, Assignment of Emergency Preparedness Responsibilities, dated November 18, 1988, as amended; Executive Order 13286, Establishing the Office of Homeland Security, dated February 28, 2003.

PURPOSE(S):

Emergency contact records are used by DOT human resources specialists, security, safety and emergency response coordinators, members of emergency response teams and other work units, and supervisors and administrative assistants, on a need to know basis, for the reasons such as the following:

- To identify and locate emergency personnel to work during emergencies, office dismissal or closure situations;
- To identify and locate mission-critical emergency personnel to participate in continuity of operations exercises and to provide continuity of operations during national security, natural disaster, pandemic flu and similar situations;
- To account for and maintain communication with personnel during an office closure, building evacuation, natural disaster, pandemic flu or other office emergency (*e.g.,* to make telework or leave arrangements), or to contact them about an urgent work matter (*e.g.,* during off-duty hours);
- To notify designated third-party contact(s) to help locate a personnel member who is absent without leave, or to assist a personnel member in an evacuation or if he or she is injured, ill or incapacitated at work; and
- To deliver an identical automated message to all of the component's or office's personnel, alerting them to conditions such as power outages, road closings and extreme weather.

Any special needs, medical condition or similar information contained in the records is maintained and used in accordance with relevant provisions of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, *et seq.,* and implementing regulations at 29 CFR parts 1614 and 1630, and the Genetic Information Nondiscrimination Act of 2008 at 42 U.S.C. 2000ff *et seq..*

Contractor personnel and detailees assisting DOT may have access to and use information in these systems; for example, DOT may use contractors to provide emergency notification and communication services or system administrative services for databases containing the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOT shares contact information about emergency personnel and mission-critical emergency personnel who are assigned to DOT emergency-related programs with Federal, State and local governmental agencies or executive offices, relief agencies, 501c3s, and non-governmental organizations, when disclosure is appropriate for proper coordination of security, protective, and other official operations and functions in response to or in preparation for emergency situations.

Other possible routine uses of the information, applicable to all DOT Privacy Act systems of records, are published in the **Federal Register** at 65 FR 19476 (April 11, 2000), under "Prefatory Statement of General Routine Uses" (available at *http://www.dot.gov/privacy/privacyactnotices).*

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM—

STORAGE:

Electronic databases and paper file folders.

RETRIEVABILITY:

Records may be retrieved by the individual record subject's name, location, telephone number, special identification numbers or codes assigned only for these records, and/or other personal identifier.

SAFEGUARDS:

Only personnel with a need to know are authorized to access the records. Access to electronic records is controlled by password and limited according to job function. Personnel may be allowed access to their own entries, to edit or update them. Access to hard-copy records is controlled by lock and key or by access to a secure area.

RETENTION AND DISPOSAL:

Pursuant to General Records Schedule 18, Item 27, contact records maintained for emergency-related programs are destroyed 3 years after issuance of a new emergency plan or directive. Pursuant to General Records Schedule 1, Item 18, other emergency contact records (such as those maintained by supervisors and administrative assistants) are destroyed when superseded or obsolete or within one year after separation or transfer of the personnel member.

SYSTEM MANAGER AND ADDRESS:

The DOT Office of Intelligence, Security and Emergency Response, the Human Resources Office, the Head of the individual record subject's employing office, or the supervisor or administrative assistant for the work group or unit.

NOTIFICATION PROCEDURE:

At any time, the record subject (the individual personnel member) may contact the System Manager to request access to review his or her personal information in the system and request changes, as appropriate. A requester must provide suitable identification and may be required to sign a written request, including but not limited to the requester's name, mailing address, telephone number and/or e-mail address, a description of the records requested, and a sworn statement (either a signed, notarized statement or a statement signed under penalty of perjury) that the requester is the individual who he or she claims to be.

RECORD ACCESS PROCEDURE:

Same as indicated under "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as indicated under "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual personnel members provide their own emergency contact information. Supervisors designate employees to serve as emergency employees or mission critical emergency employees. Emergency personnel, security specialists, human resources specialists, supervisors and administrative assistants may provide other information (*e.g.,* skill data, work location information, job titles, occupational code/series, and information that describes the emergency response group or work unit to which the individual is assigned).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 3, 2010.

Habib Azarsina,

Departmental Privacy Officer,

202–366–1965.

[FR Doc. 2010–28238 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0143; Notice 1]

JCA Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

JCA Corporation (JCA) [1] has determined that certain Trail America brand Special Trailer "ST" tires that it imported failed to meet the requirements of paragraph S6.5(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 Kilograms (10,000 Pounds) and Motorcycles.* JCA has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports,* dated October 19, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), JCA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of JCA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

[1] JCA Corporation (JCA) is a State of Washington corporation that imports replacement motor vehicle equipment.

JCA estimates that approximately 899,804 Trail America brand Special Trailer "ST" tires that were manufactured from January 1, 2008, through October 15, 2009, by Tianjin Kings Glory Tire Company, LTD. of Qiaosandao, Yangliuqing, Xiqing Tianjin, China 300380, and imported by JCA are affected.

Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less than 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires * * *

(d) The maximum load rating and corresponding inflation pressure of the tire, shown as follows: * * *

(Mark on tires rated only for single load): Max load ——kg (——lb) at ——kPa (—— psi) cold.

JCA states that the noncompliance is that the maximum single load labeling and maximum inflation pressures on the sidewalls of the tires are in English units of "lb" and "psi" only, no Metric units are included as required by paragraph S6.5(d) of FMVSS No. 119.

JCA explained that no property damage or accidents have been reported to it or its customers as a result of the subject noncompliance.

JCA further explains that it has taken steps to correct the noncompliance in future production.

JCA also states that it believes the noncompliance is inconsequential to motor vehicle safety because the affected tires fulfill all other relevant requirements of FMVSS No. 119.

Supported by the above stated reasons, JCA believes that the described noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Dates: Comment closing date: December 9, 2010.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: November 3, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–28194 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0142; Notice 1]

Pirelli Tire LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Pirelli Tire LLC (Pirelli) [1] has determined that approximately 30,881 Pirelli Pzero Nero M+S and Scorpion Zero Asimmetrico replacement tires produced between September 1, 2007, and February 26, 2009, do not fully comply with the tire labeling requirements of paragraphs S5.5 and S7.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* On March 12, 2010, Pirelli filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), Pirelli petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Specifically, Pirelli submitted the original petition, dated March 12, 2010, and a supplement to the original petition dated April 12, 2010.

This notice of receipt of Pirelli's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Pirelli estimated that 30,881 [2] Pirelli Pzero Nero M+S and Scorpion Zero Asimmetrico replacement tires produced between September 1, 2007, and February 26, 2009, in the tire sizes indicated in the following table have the subject noncompliance.

P245/45ZR17 95W, Pzero Nero M+S
P235/45ZR17 94W, Pzero Nero M+S
P235/40ZR18 91W, Pzero Nero M+S
P215/35ZR18 84W, Pzero Nero M+S
P215/35ZR19 85W, Pzero Nero M+S
265/35ZR22 102W Extra Load, Scorpion Zero Asimmetrico
295/30ZR22 103W Extra Load, Scorpion Zero Asimmetrico
305/35ZR23 111W Extra Load, Scorpion Zero Asimmetrico
265/45ZR20 108W Extra Load, Scorpion Zero Asimmetrico

Paragraphs S5.5 and S7.3 of FMVSS No. 139 require in pertinent part:

S5.5 *Tire markings.* Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches.

S5.5.1 *Tire identification number.* (a) *Tires manufactured before September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on a sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.

(b) *Tires manufactured on or after September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall * * *

S7.3 *Tires manufactured on or after September 1, 2007.* Each tire must comply with S4, S5.5, S5.5.1, S5.5.2, S5.5.3, S5.5.4, S5.5.5, and S5.5.6 of this standard.

Pirelli described the noncompliance as the absence of either the complete or partial tire identification number (TIN) on the inner tire sidewall as required by paragraphs S5.5 and S7.3 of FMVSS No. 139.

Pirelli argues that because all of the affected tires have an asymmetric tread pattern, they can only be correctly installed with the intended outer sidewall facing the outside of the vehicle. Pirelli also points out that asymmetric tires represent a very small percentage of the overall tire market.

Pirelli explained that all of the affected tires are stenciled on the intended outside sidewall with the lettering OUTER in four different languages (English, French, German and Italian).

Pirelli further explained that the non-compliance was identified on February 26, 2010, during an inspection of mold branding at the plant that produced the subject tires. Pirelli then examined related production records in order to accurately identify the specific noncompliant tires. All molds are being modified or have been modified to ensure that the appropriate TIN information is contained on both sidewalls for future production.

Pirelli provided the following basis of why they believe the subject noncompliance is inconsequential to motor vehicle safety:

> While the subject tires are noncompliant with paragraph S5.5 of FMVSS No. 139 for labeling, the noncompliance has an inconsequential effect on tire performance and motor vehicle safety because all of the affected tires meet or exceed all of the minimum performance requirements of FMVSS No. 139.

In addition, the Company mentioned the existence of certain factors that facilitates and encourages proper

[1] Pirelli Tire LLC is a manufacturer and importer of replacement equipment that is organized under the laws of the State of Georgia.

[2] Pirelli's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Pirelli as replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 30,881 of the affected tires. However, the agency cannot relieve Pirelli's distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Pirelli recognized that the subject noncompliance existed. Those tires must be brought into conformance, exported, or destroyed.

installation and thus provide accessibility and visibility of the full TIN on the outside sidewall:

Pirelli's internal policy allows dealers to sell these asymmetric tires only in pairs or in groups of four. As a result, these replacement tires are installed either on both sides of the rear axle or on all four locations. The odds of even one tire being mounted incorrectly are extremely remote, and the odds of two or four tires being mounted the wrong way are even more remote.

All subject tires are either Pzero Nero M+S or Scorpion Zero Asimmetrico. Both product families are ultra high performance tires; their asymmetric tread design is one of the main features sought by consumers for the following reasons: Precision handling in all conditions; full and compact external shoulder blocks for increased safety and dry handling performance; and inner shoulders designed to maximize traction with deeper and more regular cuts. These benefits are obtained only if the tires are mounted with the outer sidewall pointing to the outside of the vehicle. Having paid a substantial price to obtain these performance characteristics, the customers seek to ensure that their tires are installed correctly.

Pirelli's product literature and training procedures reinforce the message on proper mounting.

Pirelli provides extensive training to its authorized dealers, and that training focuses specifically on the need to mount asymmetric tires in the correct way.

A second TIN number (on the inboard side of the tire) is not necessary either to ensure traceability or to allow consumers to operate their vehicles safely.

Pirelli has not received a single complaint from any consumer, dealer, law enforcement agency, or other source that indicated any difficulty or problem in finding the full TIN, including the date code on its asymmetrical tires.

Pirelli collects and tracks data on warranty claims for all of tires, including the tires at issue here. The warranty data confirm that these tires have performed extremely well in the field. The number of claims is very small, and there have been no claims involving property damage.

In summation, for the reasons stated above, Pirelli believes that the described noncompliance concerning the tire labeling requirements of paragraphs S5.5 and S7.3 of FMVSS No. 139 is inconsequential and does not present a risk to motor vehicle safety. Thus, Pirelli requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted. In the supplement to its petition Pirelli additionally requested that if NHTSA decides that a complete exemption should not be granted, that at a minimum, NHTSA exempt the company from standard remedy requirements. Rather than replacing all tires subject to any such recall, Pirelli suggests that it would instead issue recall notices to all end users who can be located. Pirelli then would have its dealers inspect the tires. If the tires are properly mounted, with the TINs facing the outside of the vehicle, the tires would be left on the vehicle. If any tires were found to be mounted with the outer sidewalls facing inward (which is extremely unlikely), the tires would be remounted in the appropriate way.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Dates: Comment closing date: December 9, 2010.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: November 3, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–28195 Filed 11–8–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it

displays a currently valid Office of Management and Budget (OMB) control number. On September 3, 2010, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to revise the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which are currently approved collections of information. No comments were received on the proposal. The FFIEC and the agencies will implement the revisions to the reports as proposed.

DATES: Comments must be submitted on or before December 9, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to "Consolidated Reports of Condition and Income (FFIEC 031 and 041)" or "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S)," by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include reporting form number in the subject line of the message.
- FAX: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- Agency Web Site: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *comments@FDIC.gov*. Include "Consolidated Reports of Condition and Income, 3064–0052" in the subject line of the message.
- Mail: Gary A. Kuiper, (202) 898–3877, Counsel, Attn: Comments, Room F–1072, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by "1550–0023 (TFR: Schedule DI Revisions)," by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail address: *infocollection.comments@ots.treas.gov*. Please include "1550–0023 (TFR: Schedule DI Revisions)" in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0023 (TFR: Schedule DI Revisions)."
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0023 (TFR: Schedule DI Revisions)."

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002,

and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which are currently approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,494 national banks.

Estimated Time per Response: 50.15 burden hours.

Estimated Total Annual Burden: 299,696 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 841 State member banks.

Estimated Time per Response: 55.54 burden hours.

Estimated Total Annual Burden: 186,837 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,800 insured State nonmember banks.

Estimated Time per Response: 40.18 burden hours.

Estimated Total Annual Burden: 771,456 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 655 hours per quarter, depending on an individual institution's circumstances and without considering proposed revisions to the Call Report that the OCC, the Board, and the FDIC have separately proposed to implement in March 2011.[1]

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 753 savings associations.

Estimated Time per Response: 37.5 burden hours.

Estimated Total Annual Burden: 179,676 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

*Form Number*s: FFIEC 002; FFIEC 002S.

Board

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002–240; FFIEC 002S–60.

Estimated Time per Response: FFIEC 002–25.07 hours; FFIEC 002S–6 hours.

Estimated Total Annual Burden: FFIEC 002–24,067 hours; FFIEC 002S–1,440 hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for State member banks), 12 U.S.C. 1817 (for insured State nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, the Call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including, but not limited to, decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's

[1] 75 FR 60497 (September 30, 2010).

FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Current Actions

The agencies are proposing to add two items to the schedules in the Call Report, the TFR, and the FFIEC 002 for collecting data related to deposit insurance assessments and to revise the instructions for an existing item in these schedules effective December 31, 2010. These changes respond to amendments made to the Federal Deposit Insurance Act (FDI Act) by Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, July 21, 2010) pertaining to the insurance of transaction accounts.

In October 2008, the FDIC Board of Directors adopted the Transaction Account Guarantee (TAG) program as one of two components of a Temporary Liquidity Guarantee Program (TLGP).[2] Under the TAG program the FDIC guarantees all funds held at participating insured depository institutions (beyond the maximum deposit insurance limit) in qualifying noninterest-bearing transaction accounts, which include certain interest-bearing NOW accounts. Originally set to expire on December 31, 2009, the TAG program has since been extended, with certain modifications, through December 31, 2010, with the possibility of an additional 12-month extension, through December 31, 2011.[3]

Section 343 of the Dodd-Frank Act amends the FDI Act with respect to the insurance coverage of noninterest-bearing transaction accounts. These amendments take effect December 31, 2010, and require the FDIC to "fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account," thereby in effect replacing the FDIC's TAG program. Section 343 includes a definition of "noninterest-bearing transaction account" that differs from the definition of this term in the FDIC's TAG program regulations.[4] In addition, the unlimited insurance coverage of these accounts applies to all insured depository institutions, not just those institutions that elected to obtain insurance coverage for noninterest-bearing transaction accounts through the FDIC's TAG program. Under Section 343, the unlimited insurance coverage of noninterest-bearing transaction accounts would be in effect through December 31, 2012.

As a result of this statutory change in deposit insurance coverage for noninterest-bearing transaction accounts, the agencies requested comment on September 3, 2010 on a proposal to add two items to the schedules in the Call Report, the TFR, and the FFIEC 002 in which data are collected for deposit insurance assessment purposes (Schedule RC–O, Schedule DI, and Schedule O, respectively) effective December 31, 2010.[5] As of that report date, all insured depository institutions, including those institutions that had not elected to participate in the FDIC's TAG program, would begin to report the quarter-end amount and number of noninterest-bearing transaction accounts (as defined in the Dodd-Frank Act, not as defined in the FDIC's TAG program regulations) of more than $250,000. These data are needed in order for the FDIC to estimate the quarter-end amount of insured deposits for reserve ratio calculation purposes[6] and to determine the appropriate level of the Deposit Insurance Fund's contingent loss reserve for anticipated failures of insured depository institutions. Unless the unlimited insurance coverage of noninterest-bearing transaction accounts under Section 343 of the Dodd-Frank Act is extended, the two proposed new items would be collected only through the December 31, 2012, report date.

Institutions participating in the FDIC's TAG program should note that, for purposes of determining their TAG program assessments for the fourth calendar quarter of 2010 (which will be payable on March 30, 2011), they must complete the existing TAG program data items—Call Report Schedule RC–O, Memorandum items 4.a and 4.b; TFR Schedule DI, items DI570 and DI575; or FFIEC 002 Schedule O, Memorandum items 4.a and 4.b, as appropriate—for the final time in their December 31, 2010, reports. These items capture the average daily amount and average daily number for the quarter of qualifying noninterest-bearing transaction accounts of more than $250,000 as defined in the FDIC's TAG program regulations.

As a result of the unlimited insurance coverage for noninterest-bearing transaction accounts effective December 31, 2010, the agencies also requested comment on September 3, 2010, on a proposed revision of the instructions for reporting estimated uninsured deposits in Call Report Schedule RC–O, Memorandum item 2; TFR Schedule DI, item DI210; and FFIEC 002 Schedule O, Memorandum item 2.[7] These items are required to be completed by institutions with $1 billion or more in total assets. At present, balances in TAG program qualifying noninterest-bearing transaction accounts of more than $250,000 are treated as uninsured deposits for purposes of reporting estimated uninsured deposits because the TAG program was instituted as a component of the TLGP, which resulted from a systemic risk determination. Thus, TAG program insurance coverage and assessments are separate from the regular deposit insurance program administered by the FDIC. Under the Dodd-Frank Act, the extension of unlimited insurance coverage to noninterest-bearing transaction accounts at all insured depository institutions falls within the FDIC's regular deposit insurance program. Therefore, in response to this statutory change in insurance coverage, the instructions for reporting estimated uninsured deposits in the Call Report, TFR, and FFIEC 002 items identified above would be revised to indicate that balances of more than

[2] To administer the TLGP, the FDIC Board approved an interim rule on October 23, 2008, an amendment to the interim rule on November 4, 2008, and a final rule on November 21, 2008. See 73 FR 64179 (October 29, 2008), 73 FR 66160 (November 7, 2008), and 73 FR 72244 (November 26, 2008), respectively.

[3] See 74 FR 45093 (September 1, 2009), 75 FR 20257 (April 19, 2010), and 75 FR 36506 (June 28, 2010).

[4] As defined in Section 343, a "noninterest-bearing transaction account" is an account "(I) with respect to which interest is neither accrued nor paid; (II) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and (III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal." In contrast, under the FDIC's TAG program, the term "noninterest-bearing transaction account" includes not only those accounts within the scope of Section 343 but also accounts commonly known as Interest on Lawyers Trust Accounts (or functionally equivalent accounts) and negotiable order of withdrawal accounts with interest rates no higher than 0.25 percent for which the institution at which the account is held has committed to maintain the interest rate at or below 0.25 percent.

[5] 75 FR 54227 (September 3, 2010).

[6] The Deposit Insurance Fund's reserve ratio is the fund's balance divided by estimated insured deposits.

[7] 75 FR 54227 (September 3, 2010).

$250,000 in noninterest-bearing transaction accounts (as defined in the Dodd-Frank Act) should be treated as insured, rather than uninsured, deposits. Unless the unlimited insurance coverage of noninterest-bearing transaction accounts under Section 343 of the Dodd-Frank Act is extended, this instructional revision would be in effect only through the December 31, 2012, report date.

The agencies received no comments on their proposal to collect the quarter-end amount and number of noninterest-bearing transaction accounts (as defined in the Dodd-Frank Act) of more than $250,000 and to revise the instructions for reporting estimated uninsured deposits in the Call Report, the TFR, and the FFIEC 002 effective December 31, 2010. Accordingly, the agencies will implement these revisions as proposed, subject to OMB approval.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: November 3, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, on November 3, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: November 3, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–28208 Filed 11–8–10; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

Federal Register

Tuesday,
November 9, 2010

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 225

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA–2006–26173; Notice No. 3]

RIN 2130–AB82

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule revises FRA's existing regulations addressing accident/incident reporting in order to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. In addition, FRA has revised the FRA Guide for Preparing Accident/Incident Reports (FRA Guide), its accident/incident recording and reporting forms and its Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods (Companion Guide).

DATES: The final rule is effective Wednesday, June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–306, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–1331); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–204, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–1381).

SUPPLEMENTARY INFORMATION:

I. The FRA Guide and the Companion Guide

In addition to revising its regulations in the Code of Federal Regulations, FRA has revised the FRA Guide. The FRA Guide is posted on FRA's Web site at *http://safetydata.fra.dot.gov/officeofsafety.* Hard copies of the FRA Guide will be available upon request. Information on requesting hard copies of the FRA Guide can be found in § 225.21, "Forms," of this final rule.

FRA has also revised its Companion Guide containing instructions for electronically submitting monthly reports to FRA. The Companion Guide is posted on FRA's Web site at *http://safetydata.fra.dot.gov/officeofsafety.*

II. Background

A. Statutory Authority for the Accident/Incident Reporting Requirements in 49 CFR Part 225 (Part 225)

FRA's accident/incident reporting requirements [1] in Part 225, both as they exist today and as they are amended by this final rule, were issued under the statutory authority of the following three statutes: [2]

- 49 U.S.C. 20901 (formerly, part of the Accident Reports Act);
- 49 U.S.C. 20103(a) (formerly, part of the Federal Railroad Safety Act of 1970); and
- 49 U.S.C. 322(a) (formerly, part of the Department of Transportation Act).

The Accident Reports Act was enacted in 1910,[3] Public Law 165, the Act of May 6, 1910, ch. 208, 36 Stat. 350 (1910). Section 1 of the Accident Reports Act required—

> every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission [ICC] * * * a monthly report, under oath, of all collisions, derailments, or other accidents arising from the operation of such railroad under such rules and regulations as may be prescribed by the [ICC,] which report shall state the nature and causes thereof and the circumstances connected therewith * * *.

Emphasis added. In addition, Section 5 of the Accident Reports Act authorized the ICC "to prescribe for such common carriers a method and form for making the reports hereinbefore provided." Together, Sections 1 and 5 of the Accident Reports Act afforded the ICC authority to promulgate regulations to carry out the reporting provisions of the Accident Reports Act.

In 1960, the Accident Reports Act was amended to remove language in Section 1 conferring rulemaking authority on the ICC to require railroads to ("report * * * under such rules and regulations as may be prescribed by the [ICC]") and to add to Section 5 clearer language conferring that rulemaking authority ("The [ICC] is authorized to prescribe such rules and regulations and such forms for making the reports herein before provided as are necessary to implement and effectuate the purpose of this Act."). Public Law 86–762 (September 13, 1960), 74 Stat. 903. In 1966, the Department of Transportation Act transferred the responsibility for prescribing regulations to carry out the Accident Reports Act, as amended, from the ICC to the Secretary of Transportation. Sec. 6(e)(1)(K) of Public Law 89–670 (October 15, 1966), 80 Stat. 939. In addition, the Secretary delegated this responsibility to the Administrator of the Federal Railroad Administration by regulation. 49 CFR 1.49(c)(11). Later, in 1988, the Accident Reports Act was amended so as to expand its applicability from "common carriers engaged in interstate commerce by railroad" to include all "railroads." Sec. 15 of Public Law 100–342 (June 22, 1988), 102 Stat. 633. The same legislation required railroads to include in any of their reports that assigned employee error as a cause of an accident/incident to include, at the employee's option, a statement "explaining any factors the employee alleges contributed to the accident or incident." *Id.* at Sec. 24.

In 1994, the Accident Reports Act, as amended (then codified at 45 U.S.C. 38–43a), along with virtually all of the other Federal railroad safety laws, was repealed, and its provisions were revised, reenacted as positive law, and recodified without substantive change at 49 U.S.C. 20901–20903, Accidents and Incidents, with its penalty provisions in 49 U.S.C. chapter 213, Penalties, Public Law 103–272, 108 Stat. 745 (July 5, 1994). During the 1994 recodification of the rail safety laws, Congress repealed, but did not reenact or recodify the text of Section 5 of the Accident Reports Act, as amended (then codified at 45 U.S.C. 42), which authorized the Secretary "to prescribe such rules and regulations and such forms for making the reports hereinbefore provided as are necessary to implement and effectuate the purposes of [the Accident Reports Act]." Congress concluded that this section was "[un]necessary because of

[1] The discussion under this section (II)(A) concerns the statutory authority for the reporting provisions of Part 225 only, *e.g.,* 49 CFR 225.11 and 225.21, and does not address the statutory authority for the penalty, investigative, or other provisions of Part 225.

[2] This final rule adds a fourth statute to the statutory foundation for the accident/incident reporting requirements in Part 225: 28 U.S.C. 1746, Unsworn declarations under penalty of perjury. Public Law 94–550, sec. 1(a), Oct. 18, 1976, 90 Stat. 2534. Pursuant to that statute, the requirement in 49 U.S.C. 20901 that accident reports be submitted "under oath" (and, therefore, signed and notarized) has been converted into one of two alternative requirements, the second being submission of a signed, unsworn declaration saying that it is being made subject to penalty of perjury.

[3] Federal requirements that railroads report their accidents date back to before 1910, as evidenced by two provisions in the Accident Reports Act as originally enacted. The first section of the Accident Reports Act contained a proviso that relieved carriers "from the duty of reporting accidents in their annual financial and operating reports made to the commission[,]" and Section 6 repealed an accident reporting law enacted in 1901, 'An Act requiring common carriers * * * to make full reports of all accidents to the Interstate Commerce Commission.' Approved March third, nineteen hundred and one * * *"

49 [U.S.C.] 322(a).'' *See* H.R. Rep. No. 103–180, 502, 584 (1993); *reprinted in* 1994 U.S.C.C.A.N. 1319, 1401. Although Public Law 103–272 was not intended to change the substance of the laws as recodified, this is an example of how its repeal of an ''unnecessary'' law apparently changed the statutory basis of a regulation. Of course, recodification did not change any law substantively, so in a sense, Section 5 of the Accident Reports Act survives to the extent that it is legally necessary.

The preamble to this final rule refers to the current, recodified version of what was formerly known as the Accident Reports Act, by its section numbers in title 49 of the U.S. Code. Currently, § 20901 requires, in part, that railroad carriers file with the Secretary of Transportation reports on ''all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month.''

The second major statutory authority for the accident/incident reporting requirements in Part 225 is 49 U.S.C. 20103, formerly § 202 of the Federal Railroad Safety Act of 1970 (FRSA). Public Law 91–458 (October 16, 1970), 84 Stat. 971. Like the Accident Reports Act, the FRSA was repealed in 1994, and its provisions were revised, reenacted as positive law, and recodified without substantive change primarily at 49 U.S.C. chapter 201, with penalty provisions in 49 U.S.C. chapter 213. As amended, 49 U.S.C. 20103(a) provides, in pertinent part, that ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' The Secretary also delegated this authority to the Administrator of FRA. 49 CFR 1.49(m). In 1974, FRA reissued its accident reporting regulations under the added authority of the FRSA to cover additional railroads and require reporting of occupational illnesses. 39 FR 43222, December 11, 1974.

The third major statutory authority for the accident/incident reporting requirements in Part 225 is 49 U.S.C. 322(a), which was enacted in 1966, and codified in § 9(e) of the Department of Transportation Act. The statutory provision at 49 U.S.C. 322(a) reads as follows:

> The Secretary of Transportation may prescribe regulations to carry out the duties and powers of the Secretary. An officer of the Department of Transportation may prescribe regulations to carry out the duties and powers of the officer.

Under 49 U.S.C. 322(a), an officer of the Department of Transportation may prescribe regulations to carry out the duties of the officer. Section 103(d) of title 49, U.S. Code, provides that the head of the FRA is the Administrator, and the Administrator of FRA is an ''officer of the Department of Transportation,'' within the meaning of 49 U.S.C. 322(a). Section 103(g)(1) of title 49, U.S. Code, provides that ''the Administrator shall carry out—* * * duties and powers related to railroad safety vested in the Secretary by * * * chapters 203–211 of this title, and by chapter 213 of this title for carrying out chapters 203 through 211.'' Consequently, the duty of carrying out 49 U.S.C. chapter 209 is clearly one of the ''duties of the officer,'' within the meaning of 49 U.S.C. 322(a). Accordingly, the FRA Administrator may prescribe regulations to carry out 49 U.S.C. chapter 209.

B. Occupational Safety and Health Act

Although not a statutory authority for the accident/incident reporting requirements of Part 225, the Occupational Safety and Health Act (OSH Act), which Congress enacted in 1970, has shaped these requirements. Public Law 91–596, codified as amended at 29 U.S.C. 651 *et seq.* While the OSH Act gives the Secretary of Labor a broad, general authority to regulate working conditions that affect the occupational safety and health of employees, it also recognized the existence of similar authority in other Federal agencies. Section 4(b)(1) of the OSH Act, codified at 29 U.S.C. 653(b)(1), provides that the OSH Act shall not apply to working conditions as to which another Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Because FRA exercises statutory authority to prescribe and enforce standards and regulations for all areas of railroad safety under 49 U.S.C. chapter 201, OSHA's jurisdiction may be preempted by FRA under section 4(b)(1) of the OSH Act with regards to certain matters related to railroad safety. *See* Policy Statement asserting FRA jurisdiction over matters involving the safety of railroad operations, 43 FR 10584, March 14, 1978.

With respect to employee injury and illness recordkeeping, however, OSHA's Occupational Safety and Health Review Commission ruled that the railroad industry must comply with OSHA requirements and must afford the Secretary of Labor's representatives access to these records. *Secretary of Labor* v. *Conrail* (OSHRC Docket No. 80–3495, 1982). In doing so, the Commission indicated that employee injury and illness recordkeeping does not come within the purview of section 4(b)(1) of the OSH Act and, therefore, OSHA's jurisdiction has not been displaced by FRA's employee injury and illness recordkeeping and reporting regulations. Nevertheless, the Commission did state, ''[t]his does not mean that railroad industry employers must use the OSHA form, No. 200, mentioned in section [29 CFR] 1904.2(a). Section 1904.2(a) allows an employer to maintain 'an equivalent which is as readable and comprehensible [as the OSHA 200 form] to a person not familiar with it.' '' [4] Under OSHA's current regulations, 49 CFR 1904.3 states that ''[i]f you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record.'' Accordingly, because FRA's employee injury and illness recordkeeping and reporting requirements employ equivalent standards to those promulgated by OSHA, OSHA does not require railroad carriers to maintain OSHA records in addition to FRA records. Rather, railroad carriers are only required to report employee injuries and illnesses to FRA in accordance with FRA's regulations. FRA makes all railroad employee injury and illness data available to OSHA for use in its complementary program of regulation, and provides this data to the Bureau of Labor Statistics (BLS) each year for inclusion in the Department of Labor's national occupational injury and illness database.

C. Overview of Part 225 and Recent Amendments

Part 225 contains a series of specific accident/incident recording and reporting requirements. The purpose of FRA's accident/incident recordkeeping and reporting regulations is ''to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its statutory responsibilities under 49 U.S.C. chapters 201–213. FRA also uses this information for determining

[4] It should be noted that the OSHA 200 form has been subsequently renamed as the OSHA 300 form.

comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents.'' 49 CFR 225.1. Part 225's central provision requires that each railroad subject to Part 225 submit to FRA monthly reports of all accidents and incidents that meet FRA's reporting criteria. 49 CFR 225.11. Railroad accidents/incidents are divided into three groups, each of which corresponds to the type of reporting form that a railroad must file with FRA: (1) Highway-rail grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) deaths, injuries and occupational illnesses. *See* 49 CFR 225.19.

In 1996, FRA published extensive amendments to its accident/incident reporting regulations. 61 FR 30940, June 18, 1996; 61 FR 67477, December 23, 1996. This was the first major revision of the accident/incident reporting requirements since 1974. The primary purpose of the revision was to increase the accuracy, completeness, and utility of FRA's accident database and to clarify certain definitions and regulatory requirements. Among other things, these amendments required railroads to adopt and comply with an Internal Control Plan (ICP) to ensure accurate reporting of accidents and incidents.

In 2003, FRA again published extensive amendments to its accident/incident reporting regulations (FRA's 2003 Final Rule). 68 FR 10107–10140, March 3, 2003. The primary purpose of these revisions was to conform FRA's accident/incident reporting requirements to OSHA's newly revised occupational injury and illness recording and reporting requirements. 66 FR 5916–6135, January 19, 2001 (codified at 29 CFR Parts 1904 and 1952) (OSHA's 2001 Final Rule). FRA's 2003 Final Rule also addressed other issues and provided for an alternative method of recording claimed occupational illnesses with the advent of Form FRA F 6180.107, ''Alternative Record for Illness Claimed to be Work-Related.''

III. Proceedings to Date

On September 9, 2008, FRA published a Notice of Proposed Rulemaking (NPRM), which proposed miscellaneous amendments to FRA's accident/incident reporting regulations in order to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. *See* 73 FR 52496. The NPRM also proposed revisions to the 2003 FRA Guide and FRA's Accident/Incident recording and reporting forms.

The NPRM further requested comments and suggestions on four issues of concern. First, FRA requested comments and suggestions for any additional information that might be gathered on Form FRA F 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report,'' that would be useful in determining how and why highway-rail grade crossing accidents/incidents occur. Second, FRA requested comments and suggestions on whether FRA should require railroads to complete the longitude and latitude blocks on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)'' (blocks 5s and 5t), for reportable trespasser casualties only, and on Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report'' (blocks 50 and 51). Third, FRA requested comments and suggestions on whether FRA should change the method by which telephonic reports of accidents/incidents, as required by § 225.9, are made to FRA. Fourth, FRA requested comments and suggestions on whether FRA should require railroads to report to FRA on Form FRA F 6180.55a suicides and attempted suicides, otherwise referred to as ''suicide data,'' and on concerns regarding State access to such reports.

On September 10, 2008, during the 36th Railroad Safety Advisory Committee (RSAC) meeting, RSAC Task No. 2008–02 was presented for acceptance. The task offered to the RSAC for consideration was to review comments received on FRA's NPRM and would have allowed the RSAC to make recommendations for the content of the final rule. The task was withdrawn at the meeting without RSAC acceptance.

Following publication of the NPRM in the **Federal Register**, FRA held a public hearing in Washington, DC on December 18, 2008, and extended the comment period for an additional thirty (30) days following the hearing. The hearing enabled the exchange of information regarding FRA's proposed amendments, and allowed the public to articulate their issues and concerns regarding the NPRM, so that such concerns could be addressed in the final rule. The hearing was attended by a number of railroads, organizations representing railroads, and labor organizations. FRA received oral and written testimony at the hearing as well as written comments during the extended comment period. A copy of the hearing transcript was placed in Docket No. FRA–2006–26173 on *http://www.regulations.gov.* During the initial and extended comment period, FRA received comments and heard testimony from the following organizations, in addition to comments from individuals, listed in alphabetical order:

- American Association for Justice (AAJ);
- Association for American Railroads (AAR);
- American Train Dispatchers Association (ATDA);
- BNSF Railway Company (BNSF);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalman (BRS);
- California Public Utilities Commission (CPUC);
- U.S. Department of Labor (DOL);
- Illinois Commerce Commission/Transportation Bureau/Rail Safety Section (ICC);
- Kansas City Southern Railway Company (KCS);
- Metro-North Commuter Railroad Company (MNCW);
- National Railroad Passenger Corporation (Amtrak);
- New York State Metropolitan Transportation Authority (NYSMT);
- NJ Transit Rail Operations (NJT);
- Norfolk Southern Corporation (NS);
- Southeastern Pennsylvania Transportation Authority (SPTA);
- Union Pacific Railroad Company (UP); and
- United Transportation Union (UTU).

As an initial matter, when developing this final rule, FRA carefully considered all of the comments, information, data, and proposals submitted to Docket No. FRA–2006–26173 and discussed during the hearing. In addition, FRA's extensive knowledge and experience with enforcing the existing accident/incident reporting regulations was also relied upon when developing this final rule. FRA addresses the comments in the Section-by-Section Analysis of this final rule and elsewhere as appropriate.

One such comment to the NPRM stated that FRA should have used an RSAC working group for this rulemaking. FRA, however, is not required to engage the RSAC in formulating regulations. Here, as discussed above, FRA held a hearing and provided two comment periods during which interested parties had opportunities to comment on the NPRM.

IV. Section-by-Section Analysis

Technical Amendment

Throughout the rule text, this final rule updates the agency's address and other mailing addresses, when appropriate, to reflect FRA's relocation to the new U.S. Department of Transportation headquarters building. This revision affects §§ 225.7(a), 225.11(b), 225.12(g)(3), and the introductory paragraph of § 225.21. This change is also reflected in the FRA

Guide, the accident/incident reporting and recording forms, and the Companion Guide.

§ 225.1 Purpose.

The final rule removes the preemption language dealing with part 225 from this section. FRA believes that this language is unnecessary because 49 U.S.C. 20106 sufficiently addresses the preemptive effect of FRA's regulations. Providing a separate Federal regulatory provision concerning the regulation's preemptive effect is duplicative and unnecessary.

§ 225.3 Applicability.

In this section, the final rule makes a technical amendment to the introductory text of paragraph (b) with respect to that paragraph's reference to FRA's required ICP elements. Currently, paragraph (b) refers only to ICP elements 1 through 10. The final rule revises the paragraph to include element number 11 (added in FRA's 2003 Final Rule), which requires railroads to include in their ICPs a statement that specifies the name, title, and address of the custodian of the railroad's Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" records and all supporting documentation, as well as the location of such documents. *See* 68 FR 10107, 10139, March 3, 2003.

§ 225.5 Definitions.

The final rule amends paragraph (1) of the definition of "Accident/incident" to clarify the definition and to conform to the FRA Guide. In the NPRM, FRA set forth to clarify the definition of accident/incident with respect to impacts at highway-rail grade crossings. Commenters generally indicated that further clarification was necessary regarding under what circumstances sidewalks and pathways are considered to be part of a highway-rail grade crossing site.

In response to these comments, FRA determined that the proposed definition required revision. As such, the final rule provides that "Accident/incident" means, in part, any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing. The final rule, elsewhere in § 225.5, defines the term "highway-rail grade crossing" to mean a location where a public highway, road, street, or a private roadway, including associated sidewalks, crosses one or more railroad tracks at grade, or a location where a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, street, or a private roadway, crosses one or more railroad tracks at grade. The definition of "highway-rail grade crossing" further provides that the term "sidewalk" means that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or, on easements of private property, that portion of a street that is paved or improved and intended for use by pedestrians. The FRA Guide provides a diagram illustrating the definition of the term sidewalk. *See* FRA Guide, Chapter 2. In addition, the final rule provides that the term "highway user" may include an automobile, bus, truck, motorcycle, bicycle, farm vehicle, pedestrian, or any other mode of surface transportation motorized and un-motorized.

FRA does not believe that this clarifying amendment increases the burden on railroads because it is consistent with common industry practice as well as FRA's long-standing policy. Moreover, even if reporting accidents at such pathways was not standard industry practice, any increased burden would be nominal. Based on the U.S. DOT National Highway-Rail Crossing Inventory, FRA estimates that there are approximately 2,000 grade crossings in the United States that are not associated with highways, roads, streets, or private roadways and that very few highway-rail grade crossing accidents/incidents occur at these locations each year. Accordingly, even if this did place a new burden on railroads to report accidents/incidents not previously reported, the burden would be insignificant in light of the small number of additional reports that would be required.

The final rule also clarifies that sidewalks that may be used to cross railroad tracks at grade are considered to be part of (*i.e.,* associated with) the highway-rail grade crossing. The definition of sidewalk included in the final rule clarifies which sidewalks are considered associated with the crossing. FRA does not believe this clarification will result in any change to current railroad reporting practices. In addition, the definition of the term "sidewalk" is based on the definition of the term as articulated in the 2009 edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices. The FRA Guide includes an illustrative diagram to help clarify the meaning of the term "sidewalk." *See* FRA Guide, Chapter 2.

A comment to the NPRM suggested that FRA use the term "road user" rather than the term "highway user." The final rule does not adopt this suggestion in order to maintain consistency between the terms "highway user" and "highway-rail grade crossing." A comment also sought clarification that there are no exceptions to reporting collisions between on-track equipment and highway users. FRA believes that the final rule is clear that any impact between a highway user and on-track equipment at a highway-rail grade crossing qualifies as a highway-rail grade crossing accident/incident and that further clarification is not required. A comment also recommended that impacts at highway-rail grade crossings be referred to as "train-vehicle collisions," rather than "accidents/incidents." The final rule does not adopt this suggestion because such an amendment is not consistent with the historical use of such terms.

The final rule also amends paragraph (3) of the definition of "Accident/incident" to conform to the revised language in § 225.19(d) and to reference, rather than explicitly list, the general reporting criteria set forth in § 225.19(d). *See* Section-by-Section Analysis for § 225.19(d).

In the NPRM, FRA proposed amending the definition of "Accountable injury or illness" to mean any abnormal condition or disorder of a railroad employee that manifests *within* the work environment and causes or requires a railroad employee to be examined or treated by a qualified health care professional, but does not meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6) regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment.

The final rule amends the definition of "Accountable injury or illness" to conform to the amended definition of "injury or illness;" to eliminate redundancy by removing the word "activity" from the phrase "by an event, exposure, or activity in the work environment" as the amended definition of "event or exposure" in the final rule includes activities; to eliminate potential underreporting of work-related injuries and illnesses; to ensure that potentially reportable injuries and illnesses are documented, tracked, and evaluated for reporting and auditing purposes; and to delete the phrase "not otherwise reportable" due to its ambiguity. *See* Section-by-Section Analysis for § 225.19(d), "Primary groups of accidents/incidents; Death, injury and occupational illness." The final rule amends the definition of "Accountable injury or illness" to mean

"any abnormal condition or disorder of a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional, regardless of whether or not it meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6), and the railroad employee claims that, or the railroad otherwise has knowledge that, an event or exposure arising from the operation of the railroad is a discernable cause of the abnormal condition or disorder."

The language proposed in the NPRM specified that an accountable injury or illness is one that "does not meet the general reporting criteria." The final rule replaced this with "regardless of whether or not it meets the general reporting criteria" because an injury or illness may eventually become reportable or the railroad may not have enough information at the time to determine whether the injury or illness is reportable. These are clarifications and do not pose any change to FRA's accident/incident recording or reporting requirements.

The purpose of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," is to create an initial record of, and audit trail for, each potentially reportable injury or illness. As such, under the previous recording requirements, railroads were required to complete the Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," for each accountable and reportable injury or illness within seven (7) working days after first becoming aware of the accountable or reportable injury or illness. As a result, under FRA's 2003 Final Rule's definition of accountable and reportable injury and illness, a railroad had to make an initial determination with regard to the work-relatedness of an injury or illness within seven working days. Once a railroad determined that an employee injury or illness was not work-related, the railroad was not obligated to create any record or report of the casualty.

In many cases, injuries and illnesses, and/or the signs and symptoms thereof, manifest in the work environment without the cause(s) being readily apparent. Therefore, a railroad, during its initial seven day investigation, may have determined that an injury or illness was not work-related when additional investigation and time would have shown that the injury or illness was in fact work-related. Consequently, FRA is concerned that some railroads are prematurely attributing the cause of an injury or illness solely to a non-work-related event or exposure occurring outside the work environment. FRA was similarly concerned that some railroads were not investigating pertinent information about employee injuries and illnesses to make an accurate work-relatedness determination. As a result, FRA believes that some railroads may have under-reported employee injuries and illnesses, and, because a Form FRA F 6180.98 was not completed to initially record the injury or illness, no audit trail was created. In such circumstances, FRA and the railroads were left unaware of the potentially reportable or accountable injury. Moreover, by only requiring a record for those casualties that were ultimately determined to be work-related within the initial seven days period, FRA was prevented from later evaluating the reportability of the injury or illness in order to determine whether the reporting officer made an appropriate reporting decision or whether the railroad complied with its duty to investigate the injury or illness.

In consideration of the comments and FRA's safety mission, the final rule contains a revised definition. The definition contained in the final rule triggers the railroads' responsibility to create a Form FRA F 6180.98 for (*i.e.,* an accountable injury or illness) any abnormal condition or disorder of a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional regardless of whether or not it meets the general reporting criteria in § 225.19(d), and the employee claims that, or the railroad otherwise has knowledge that, the injury or illness is work-related. Therefore, the definition in the final rule eliminates the requirement that a railroad record all injuries or illnesses based on manifestation regardless of cause. While railroads are still required to complete the Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," for each accountable and reportable injury or illness within seven working days after first becoming aware of the accountable or reportable injury or illness, the revised definition of accountable injury/illness will alleviate the railroad's need to make a final decision with regard to work-relatedness when an employee claims or suspects that the injury or illness is in fact work-related and will ensure that a record of each potentially reportable injury or illness is created. *See* Section-by-Section Analysis of § 225.25 for additional information. This approach helps to ensure that railroads record and thoroughly investigate injuries and illnesses where the employee claims that an event or exposure in the work environment is a discernable cause of the employee's injury or illness but additional investigation is necessary. This approach creates an audit trail of potentially work-related employee injuries and illnesses, and, because the railroad need not make a final determination regarding work relatedness within seven days, provides additional time for railroads to complete the work-related analysis. Moreover, this approach allows FRA to use the audit trail to better understand railroads' reporting processes and their application of the applicable regulations.

FRA received numerous comments addressing the proposed definition of "Accountable injury or illness." Because of the language adopted in the final rule, a majority of those comments are no longer applicable. At the hearing and in the written comments, several railroads and organizations representing labor and railroads asserted that FRA's reporting requirements must be based upon work-relatedness and, therefore, the proposed amendment was outside of FRA's authority. While FRA disagrees with this assertion, this issue is no longer relevant. FRA has been tasked with and given the authority to prescribe regulations that "promote safety in every area of railroad operations and reduce railroad–related accidents and incidents." 49 U.S.C. 20102. Moreover, FRA has the authority to investigate "an accident or incident resulting in serious injury to an individual or to railroad property." *Id.* As such, the proposed changes were well within FRA's authority as they were meant to improve FRA's safety data and to allow FRA to audit railroad reporting decisions. Finally, although FRA makes every effort to maintain consistent reporting requirements with those of OSHA, FRA's accident/incident recording requirements are based solely on FRA's program needs and purposes, and as such may differ from OSHA's requirements to any extent FRA believes is necessary.

Comments by NJT, UP, and AAR, among others, asserted that the proposed amendments could increase the misclassification of data by capturing too much information. As an initial matter, these comments concerned the language proposed in the NPRM. Regardless, with respect to the language in the final rule, railroads should already be reviewing all employee claimed or suspected work-related injuries and illnesses. FRA is simply requiring that the railroad document these suspected work-related injuries.

Many comments also stated that the proposed changes are not connected to

identifying safety hazards and that the previous reporting scheme did not result in underreporting. As explained above, the prior definition created an inadequate audit trail. In addition, FRA believes that the prior reporting system did result in underreporting due to the difficulties related to making a final work-relatedness determination within seven days for certain injuries and illnesses. Also, prior to this final rule, when a railroad made an initial incorrect or premature recording decision that an injury or illness was not recordable, the reporting system did not ensure that the railroad would catch the problem at a later time. Now, with the clarification that when an employee claims that, or railroad otherwise has knowledge that, an injury or illness is work-related, a railroad will be required to record such injuries and illnesses. In addition, the final rule improves the audit trail created by the railroads and better enables FRA to review reporting decisions and to identify reporting problems.

Other comments suggested that the current reporting scheme captures all of the necessary data. Specifically, AAR argued that there are sufficient tools currently in place, such as the ICP, to identify underreporting. UP argued that it is using a reliable review process that allows it to identify where additional information is required so that it is making accurate reporting decisions. The ICP requires the railroad to audit its own reporting and make appropriate changes in its reporting system to improve the quality of reporting. In the preamble of the June 18, 1996 regulation, FRA challenged the railroads to develop a Total Quality Management (TQM) system to have zero defects in reporting. The final rule is consistent with the purpose of the ICP, which is to have complete and accurate reporting. (49 CFR 225.33(a)(1)). FRA has found that the current tools do not always capture injuries or illnesses where the cause of the injury or illness is not readily apparent. The previous ICP did not create an audit trail for a situation in which a railroad determined that the injury or illness is not work-related, therefore, FRA and the railroads were hindered in reviewing and auditing the initial reporting decisions. AAR stated in post-hearing comments that disparities in reporting between railroads is not a sign of underreporting. However, without making an initial record and monitoring injuries and illnesses, it is difficult for the railroads or FRA to completely understand or explain the disparities in reporting. The changes in the final rule will allow FRA to review the railroad's decision making process to better understand those disparities and to better understand which safety measures are effective in preventing certain types of injuries and illnesses.

Commenters also argued that the proposed amendments were overly burdensome, suggesting that railroads would have to record every minor injury or illness, and that they may somehow violate the Americans with Disabilities Act (ADA), as railroads would be forced to follow up on and collect non-work-related medical information. Again, these comments relate to the proposed language in the NPRM, thus, they are not entirely applicable to the language adopted in the final rule. The final rule simply requires railroads to make a record of each injury or illness that the employee suspects or claims, or the railroad otherwise has knowledge that, is work-related. And, as noted, railroads should already be investigating these potentially work-related injuries and illnesses. FRA is simply asking the railroads to document their investigation of all potentially work-related injuries and illnesses where the employee claims or suspects the casualty is work-related, rather than just those that are ultimately determined to be work-related. During the hearing, in response to allegations that the amendment would result in violations of privacy laws, FRA asked that the railroads submit additional comments explaining how the amendment would force railroads to violate privacy laws. AAR stated that the proposed language would force employers to request personal information without providing any safety benefit. As explained above, the changes in the final rule are aimed at improving safety in the rail industry and justify requesting sensitive information, particularly where the employee suspects or claims, or the railroad knows, that the injury or illness is work-related. Moreover, the definition in this final rule does not expand the scope of the injuries or illnesses to be investigated under FRA's 2003 Final Rule but simply creates a recordkeeping requirement.

Several commenters stated that the meaning of the terms "manifests" and "abnormal" were vague. As an initial matter, the final rule does not include the term "manifests." In addition, FRA's use of the term "abnormal" is clear, and is consistent with OSHA's language.

Finally, several commenters suggested that FRA should review railroads' reporting and recording decisions based on whether or not a decision is reasonable. AAR stated that employers are in the best position to determine whether an injury or illness is work-related. Pursuant to § 225.17, "Doubtful cases," FRA cannot delegate its authority to decide matters of judgment when facts are in dispute. FRA must be able to ensure that its accident/incident data is complete and accurate. Consequently, the final reporting decision is FRA's. AAR also stated that if OSHA disagrees with an employer's decision, OSHA has the burden of proving that the injury or illness was work-related. Consistent with OSHA, the FRA Guide explains that, once an employer determines that an injury or illness is not reportable "and FRA subsequently issues a citation for failure to report, the Federal Government would have the burden of proving that the injury or illness was work-related." *See* FRA Guide. To meet its burden, FRA must show that it is more likely than not that an event or exposure arising from the operation of the railroad was a discernable cause of the injury or illness or an event or exposure was a discernable cause of the significant aggravation of a pre-existing injury or illness. Except with respect to occupational illnesses, FRA's 2003 Final Rule states that "it is the railroad's responsibility to determine whether an illness is work-related," meaning that "FRA's role will be to determine whether the reporting officer's determination was reasonable." FRA emphasizes, this language refers to only occupational illnesses and FRA retained the ability to present evidence that the railroad's decision was in fact not reasonable. 68 FR 10119, March 3, 2003.

In the NPRM, FRA proposed amending the definition of "Accountable rail equipment accident/incident" to mean "a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that does not result in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed." The final rule defines "Accountable rail equipment accident/incident" to mean "(1) any derailment regardless of whether or not it causes any damage or (2) any collision, highway-rail grade crossing accident/incident, obstruction accident, other impact, fire or violent rupture, explosion-detonation, act of God, or other accident/incident involving the operation of railroad on-track equipment (standing or moving) that results in damage to the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed and that damage impairs the

functioning or safety of the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed."

Under the definition contained in FRA's 2003 Final Rule, generally, an accountable rail equipment accident/incident meant an incident that resulted in damage below the reporting threshold and that, if not attended to, would disrupt railroad service. FRA has found through its audits and enforcement tools that the term "disruption of service" has not been consistently understood or uniformly applied throughout the railroad industry. Moreover, FRA found that the previous definition of accountable rail equipment accident/incident failed to adequately capture the accidents and incidents FRA originally intended and currently requires to be recorded and/or reported for data analysis and safety purposes. Specifically, FRA originally created the Form FRA F 6180.97 to establish a means by which railroads could record and FRA could audit railroad reporting decisions with regard to the reporting of railroad accidents/incidents on Form FRA F 6180.54. FRA has expanded its use of the Form FRA F 6180.97 to identify safety hazards in yards and terminals, which has benefited FRA's safety efforts, as those incidents are precursors for reportable accidents and incidents.

Based upon FRA's thorough review and consideration of the comments and FRA's goals of creating an audit trail, applying a uniform and simpler standard and capturing data that will allow it to identify and eliminate safety hazards, FRA believes that the language adopted in the final rule is more appropriate than the language proposed in the NPRM. FRA received numerous comments addressing the proposed amendments to the definition of "Accountable rail equipment accident/incident" and, based upon the language adopted in the final rule, a majority of those comments are no longer applicable.

FRA received comments that the proposed definition would create a substantial burden on the railroads as it would require them to record every minor incident regardless of the amount of damage and the connection to safety. The final rule does not require railroads to report or record damage that is the result of normal wear and tear. Rather, as in FRA's 2003 Final Rule, this final rule only classifies an accident/incident as an "accountable rail equipment accident/incident" when it results from a derailment, collision, highway-rail grade crossing accident/incident, obstruction accident, other impact, fire or violent rupture, explosion-detonation, act of God, or other accident/incident involving the operation of railroad on-track equipment (standing or moving). FRA intends to use the information captured to learn about precursors to reportable accidents/incidents and to improve safety. The final rule clarifies that, with the exception of derailments, an incident must result in damage and that damage must impair the functioning or safety of the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed. Consequently, FRA is not requiring the railroads to record minor incidents that result from normal wear and tear. Consistent with FRA's 2003 Final Rule, FRA believes it is necessary to record every derailment as such information will provide greater insight into their causes and will prevent future reoccurrences, including those that may result in hazardous material spills, significant damage, and/or casualties. Finally, the definition adopted in the final rule, which eliminates the disruption of service criteria, creates a clear reporting standard that will allow for easier and more consistent enforcement and compliance.

SEPTA suggested, in one comment, that FRA retain the disruption of service criteria. FRA did not implement this suggestion. As discussed above, the disruption of service criteria does not capture all of the data FRA needs to ensure safety. Moreover, FRA has found that the disruption of service criteria has not been uniformly applied. FRA believes that the language adopted in the final rule is more appropriate and not overly burdensome.

In addition, several commenters suggested that the proposed definition was unclear and that it was unclear what information FRA was attempting to capture. FRA believes that the language adopted in this final rule, however, is clear and will allow for the uniform application of the standard.

The final rule includes a definition for "Discernable cause." In order to clarify the meaning of this term and to ensure consistency with OSHA's reporting requirements, the final rule defines "Discernable cause" in § 225.5 to mean, "a causal factor capable of being recognized by the senses or the understanding." *See also, Webster's Third New International Dictionary* (1961); *Webster's Third New International Dictionary, Unabridged* (1971). The definition further provides that "[a]n event or exposure arising from the operation of a railroad is a discernable cause of (*i.e.,* discernably caused) an injury or illness if, considering the circumstances, it is more likely than not that the event or exposure is a cause of the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (*i.e.,* a contributing factor)."

FRA's accident/incident reporting regulations concerning railroad occupational casualties are maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations, in order to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents.[5] Moreover, maintaining such compatibility allows railroads to report occupational casualties only to FRA, rather than to OSHA and to FRA. *See* 29 CFR 1904.3.

With respect to employee injury and illness recording, OSHA's 2001 Final Rule, states that "each employer * * * must record each fatality, injury and illness that is work-related; and is a new case; and meets one or more of the general recording criteria * * * or the application to specific cases." 66 FR 5916, 5945, January 19, 2001, codified at 29 CFR 1904.4(a). OSHA's 2001 Final Rule goes on to state that "[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness," and that "[w]ork-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b)(2) specifically applies." 66 FR 5916, 5946, January 19, 2001, codified at 29 CFR 1904.5(a).

After OSHA's 2001 Final Rule was published, the National Association of Manufacturers (NAM) filed a legal challenge to the final rule, with respect to (among other things) the final rule's presumption of work-relatedness. On November 16, 2001, OSHA and NAM entered into a settlement agreement to resolve NAM's legal challenge. The parties then entered into a revised

[5] It should be noted that under OSHA's regulations, the term "recording" is used. Under FRA's regulations and the FRA Guide, the term "reporting" is used. The OSHA system requires recording into the OSHA 300 Log whereas FRA has always used the term "reporting" in its regulations and in the FRA Guide because the Accident Reports Act of 1910, as amended, requires "a railroad carrier [to] file a report * * * on all accidents and incidents * * *" 49 U.S.C. 20901.

settlement agreement on November 29, 2001. The revised settlement agreement was published in the Federal Register at 66 FR 66943, December 27, 2001. As part of the NAM–OSHA settlement, the parties agreed to the following:

Section 1904.5(a) states that "[the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. Work relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment * * *" Under this language, a case is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to [sic] pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.

Section 1904.5(b)(2) states that a case is not recordable if it "involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment." This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a discernable cause of the injury or illness or of a significant aggravation to a pre-existing condition.

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, the employer "must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." This means that the employer must make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness, or a significant aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related."

In 2003, FRA revised its accident/incident reporting regulations to conform, to the extent practicable, to OSHA's revised requirements. *See* 68 FR 10108–10140, March 3, 2003. In doing so, FRA took into account the NAM–OSHA settlement agreement, in particular the agreement's reference to the term "discernable," to qualify or describe cause. FRA included the phrase "discernable cause" in its definitions of "Accident/incident," "Accountable injury or illness," and "Occupational illness" in § 225.5, and added the phrase to its reporting requirement for "Deaths, injuries and occupational illnesses" at § 225.19(d). While FRA did discuss the meaning of "discernable cause" in the preamble of FRA's 2003 Final Rule, *see* 68 FR 10108, 10127, March 3, 2003, the agency did not explicitly define the term "Discernable cause" in the rule text.

On January 15, 2008, FRA received a letter from the DOL's Office of the Solicitor (OSHA Letter) confirming FRA's understanding and application of the NAM–OSHA settlement agreement and OSHA's recordkeeping requirements with regard to "work-relatedness," in addition to providing further clarification on particular points of law. In the OSHA Letter, OSHA stated that "'[d]iscernable' is used in the ordinary sense; that is, capable of being recognized by the senses or the understanding." OSHA Letter at 3. OSHA's definition came from Webster's Third International Dictionary. The OSHA Letter goes on to state that an event or exposure is a discernable cause if, "considering the circumstances, it is more likely than not that the event or exposure is a cause of the injury or illness." *Id.* FRA submitted the OSHA Letter to Docket Number FRA 2006–26173 on December 10, 2008.

FRA received several comments from the railroads and other organizations regarding the proposed definition of discernable cause. Many comments stated that the proposed definition was inconsistent with OSHA's reporting requirements. As explained above, FRA adopted a definition that is virtually identical to and consistent with OSHA's definition to ensure that railroads need to report only to one agency and that there is consistent reporting across industries. One comment suggested that OSHA requires that the cause be distinguishable from other causes, and that FRA's definition is inconsistent. Although OSHA requires that an event or exposure be a tangible cause, it does not require that the event or exposure be the main or predominate cause of the injury or illness. In addition, neither OSHA nor FRA require that the railroad calculate the exact amount of cause a particular event or exposure played in the subsequent injury or illness, only that it be a cause. Moreover, like OSHA, where it is difficult to determine whether the event or exposure is a cause, FRA requires that the employer consider the circumstances surrounding the event or exposure to determine whether it is more likely than not a cause.

Other comments suggested requiring that the event or exposure in the work environment be the predominant or main cause to ease the reporting burden and to simplify the reporting scheme. However, this suggestion would make the definition inconsistent with OSHA. In the OSHA Letter, OSHA stated, with regards to "causation," that "the employer need not weigh the relative contributions of occupational and non-occupational factors to the injury or quantify the extent of the occupational contributions." *Id.* As such, "discernable" in this context does not mean obvious. In addition, requiring that the event or exposure be the predominant or main cause would exclude certain injuries and illnesses, and would be difficult to measure and enforce.

Some comments requested that medical evidence factor into the causation decision. Consistent with OSHA, FRA recognizes that when causation is not obvious, that "consultation with a health care professional" may play a part in the reportability determination. *Id.* However, the final reporting decision is made by a railroad's reporting officer and the responsibility cannot be delegated to another individual. Railroads also asked what weight FRA gives to medical evidence compared to other types of evidence. Again, FRA, like OSHA, acknowledges that medical consultation may be a factor the railroad reporting officer considers, but the reporting officer may not delegate the reporting decision to a health care professional. As stated in the definition, "[i]f it is unclear whether the work event was a cause of the injury, the employer must evaluate the employee's work duties and environment and decide whether it is more likely than not that work was a cause." *Id.* Thus, an employer is responsible for considering all of the relevant evidence obtained through its inquiry when making a reporting decision. When reviewing the railroad's reporting decision, FRA considers various factors when giving weight to a health care professional's opinion, including, but not limited to, whether the health care professional clearly documented his or her findings, whether the conclusion is supported by evidence, and whether the health care professional provided a medical assessment or, instead, a conclusory statement.

Finally, commenters asserted that FRA "always" takes employees at their word and, therefore, railroads are not truly free to consider contradictory medical evidence. However, that is not the case. As stated in § 225.17, "Doubtful cases," FRA has the authority to resolve factual disputes. During its audit, FRA reviews the basis for a railroad's reporting decision, in addition to the "investigatory materials,

including, but not limited to, the following: The initial report filed by the affected person, witness statements, transcripts of hearings, medical records, time and attendance records, and the purpose of payouts made in connection with the accident/incident." *See* FRA Guide, Chapter 1. Moreover, FRA conducts additional investigation and consults with its own health care professional when appropriate. At the conclusion of its investigation, FRA will review the railroad's reporting decision and all of the associated evidence to determine whether it is more likely than not that an event or exposure arising from the operation of the railroad is a discernable cause of the injury.

Commenters suggested using an evidence-based approach to determine causation. During his testimony, Dr. M. Hadler commented that individuals often have difficultly recognizing what caused their injuries and tend to attribute cause to the environment they are in at the time their pain becomes unbearable. Consequently, Dr. Hadler suggested using a more scientific approach (such as a pain diary) to determine causation. Additionally, KCS and UP suggested that FRA use the National Institute for Occupational Safety and Health's (NIOSH) approach to determine causation. FRA, however, has chosen to adopt OSHA's language and method of determining causation so that railroads may report injuries and illnesses to only one agency, FRA. If FRA adopted the NIOSH approach then railroads would be responsible for reporting employee injuries and illnesses separately to both OSHA and FRA. FRA collection of employee injuries and illnesses must be consistent with OSHA's system to make a reliable national database. Failure to be consistent with OSHA would trigger dual reporting requirements for railroads (to OSHA and to FRA). UP supported adopting the NIOSH approach because it believes that each person shows injuries and illnesses differently. Thus, UP and KCS would like an approach that considers the unique factors for each person. Under FRA's approach, a railroad should conduct an inquiry into any potentially reportable or accountable injury or illness. At the conclusion of its investigation, the railroad must decide whether, considering the circumstances, it is *more likely than not* that an event or exposure arising from the operation of the railroad is a discernable cause of an injury or illness. Consequently, under this approach, a railroad may consider the various unique factors associated with each employee's potentially reportable or accountable injury or illness, including but not limited to an employee's medical and work history, in addition to an employee's statements regarding his or her injury or illness.

Commenters also suggested that the definition of discernable cause is too broad. Specifically, commenters suggested that the definition requires railroads to collect information that is not relevant to occupational safety and will result in over-reporting. Again, the definition of discernable cause is consistent with FRA's longstanding policy and with OSHA's interpretation. As a result, the definition will not change railroad reporting responsibilities and, in fact, will ease the reporting burden (as railroads have to report to only one agency). Like OSHA, FRA does not require that the cause be occupational in nature. *See also* Section-by-Section Analysis for § 225.5, "Definitions—Work-related." Also, the definition is appropriate as it allows FRA to identify injuries and illnesses for which events or exposures arising from the operation of the railroad play a role, and it is not overly broad as the injuries and illnesses must also meet one of the reporting criteria. In addition to the benefits of collecting uniform data across industries, FRA is not collecting information regarding minor injuries with no safety impact as an event or exposure arising from the operation of the railroad must be a discernable cause and the injury or illness must be severe enough to meet one of the reporting criteria.

Commenters also stated that the definition of discernable cause is vague and fails to provide clear guidance to railroads. Specifically, one comment stated that the dictionary definition was uninformative. As explained above, the cause need not be the sole or predominant cause, rather it must be a contributing factor. If it is not clear whether the event or exposure was a discernable cause, the employer must consider the surrounding circumstances to determine reportability. FRA believes that the definition and standard are clear. Moreover, when a railroad is unsure about the reportability of an injury or illness, FRA recommends that a railroad make a report or utilize FRA's "claimed but not admitted" process as described in 49 CFR 225.17(c).

Commenters suggested that FRA is creating a geographic presumption and, therefore, the definition is inconsistent with OSHA. Moreover, commenters want to limit the cause to just those injuries that are occupational in nature (*i.e.,* related to performing job-related activities). *See* Section-by-Section Analysis for § 225.5, "Definitions—Event or exposure arising from the operation of the railroad" and "Definition Work related." For employees, consistent with OSHA, the final rule requires that an event or exposure in the work environment be a discernable cause of the injury or illness. Therefore, FRA is still requiring causation and, as such, an injury or illness is not work-related simply because signs or symptoms arise in the work environment. For non-employees, FRA requires that an event or exposure arising from the operations of the railroad be a discernable cause of the casualty, and, as such, FRA did not create a geographic presumption. Although the railroads would like to limit reportable injuries and illnesses to those caused by events and exposure that are uniquely occupational, consistent with OSHA, FRA simply requires for employees that an event or exposure arising from the operation of the railroad be a discernable cause of the injury or illness. *See* Section-by-Section Analysis for § 225.5, "Definition—Work related."

Finally, commenters suggest that employers, and not FRA, are in the best position to determine causation. Consistent with OSHA, for purposes of § 225.11, FRA is not reviewing a railroad's reporting decision to determine whether it was reasonable (except in the case of occupational illness (*See* FRA's 2003 Final Rule)); rather, FRA is determining whether an injury or illness is reportable.

The final rule defines an "Event or exposure" as an "incident, activity, or occurrence." FRA included the definition to clarify that event or exposure is a term that is to be broadly interpreted and to eliminate redundant language in the rule text.

Many of the comments that FRA received suggested that normal body movements such as walking or sneezing do not constitute an event or exposure. However, consistent with OSHA, FRA considers "normal body movements" to be events within the definition. *See* OSHA Letter at 3. Such normal body movement cases are only reportable if they arise from the operation of the railroad and cause or contribute to the injury or illness. *See* Section-by-Section Analysis for § 225.5, "Definition—Work related" and "Definition—Discernable cause." Consistent with OSHA's requirements, FRA does not require that the event or exposure be an "obvious cause" of the injury or illness, or be occupational in nature and, therefore, normal body movements may result in reportable injuries or illnesses.

The final rule amends and restructures the definition of "Event or exposure arising from the operation of a railroad" to clarify its meaning. The term "event or exposure arising from the operation of a railroad" and its definition were added in FRA's 2003 Final Rule to more narrowly tailor what types of accidents/incidents were considered to "arise from the operation of a railroad" and were, therefore, potentially reportable. 68 FR 10108, 10115–16, March 3, 2003.

FRA's 2003 Final Rule's definition consisted of three-tiers that addressed the different classifications of persons on and off railroad property. The first tier defined "event or exposure arising from the operation of a railroad" broadly "with respect to any person on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to its rail transportation business or an exposure related to the activity." The final rule revises this first tier of the definition by changing "any person" to "a person who is not an employee of the railroad." This amendment is consistent with the intent of FRA's 2003 Final Rule:

> FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business.

68 FR 10108, 10109, March 3, 2003. The revision clarifies that the definition was intended to apply only to persons who are not railroad employees. The final rule also removes the phrase "an activity of the railroad" such that tier one of the definition concerns an event or exposure that is related to the performance of the railroad's rail transportation business. The final rule also removes the reference to "activity" since the definition of "event or exposure" in the final rule includes "activity." The final rule also revises the language proposed in the NPRM to clarify that the newly consolidated tier one subpart (i) deals with a person who is not an employee and is on railroad property, rather than an event or exposure occurring on property. FRA believes this clarifying language is consistent with the intent of FRA's 2003 Final Rule. As this change is consistent with current industry reporting practices and the language in the FRA's 2003 Final Rule, the amendment to the final rule should have no impact on reporting practices and, in fact, is more consistent with current practices than the language proposed in the NPRM.

The second tier also defined "event or exposure arising from the operation of a railroad" broadly, but "with respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to that activity." The final rule clarifies this paragraph by revising the definition to state "with respect to a person who is an employee of a railroad, an event or exposure that is work-related." This amendment removes the phrase "an activity of the railroad," since the definition of "event or exposure" in the final rule includes "activity." The final rule also removes the phrase "(whether on or off property owned, leased, or maintained by the railroad)" and the phrase "that is related to the performance of the railroad's rail transportation business * * *" because the term "work-related" encompasses both of those requirements.

The third tier defined "Event or exposure arising from the operation of a railroad" narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.,* a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business. *68 FR 10108, 10116, March 3, 2003.* The final rule revises the language proposed in the NPRM to clarify that the new consolidated tier one subpart (ii) deals with a person who is not an employee and is not on railroad property, rather than an event or exposure not occurring on property. FRA believes this clarifying language is consistent with the intent of FRA's 2003 Final Rule. As this change is consistent with current industry reporting practices and the language in FRA's 2003 Final Rule, the amendment to this final rule should have no impact on reporting practices and, in fact, is more consistent with current industry practices than the language proposed in the NPRM.

The final rule consolidates tier one, tier two, and tier three of the definition into two tiers so that tier one is applicable to non-employees and tier two is applicable to employees. The amendments and restructuring are clarifying measures and do not change the meaning of the definition. The definition continues to mean, consistent with FRA's 2003 Final Rule, "that a railroad would not have to report to FRA the death of or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor." *68 FR 10108, 10116, March 3, 2003.*

The final rule amends the language proposed in the NPRM in the first tier by clarifying that a person who is not an employee is considered to be on railroad property when they are on property that the railroad operates over (*e.g.,* operating rights), in addition to property owned, leased, or maintained by the railroad. FRA does not believe that this clarifying amendment increases the burden on railroads because it is consistent with common industry practice as well as FRA's long-standing policy. Any burden created by this amendment would be nominal, as a majority of these incidents would have been captured elsewhere under the prior definition.

The final rule also amends the language proposed in the NPRM in the first tier (ii)(A) by removing "highway-rail grade crossing accident or incident" from the list of accidents/incidents considered to be "events or exposures arising from the operation of the railroad" when a non-employee is off railroad property. FRA is removing highway-rail grade crossing accident or incident from the list of off property accidents/incidents because it is repetitive, as those types of accidents and incidents are already captured under train accident and train incident. FRA also added the term "non-train incident." Non-train incident is defined as an "event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents." *See* § 225.5, "Definitions—Non train incident." FRA included "non-train incident" to make the definition consistent with FRA's 2003 Final Rule and the 2003 FRA Guide. In the 2003 FRA Guide, non-train incidents were included in the list of accidents/incidents. This amendment

simply clarifies that FRA wants to retain the non-train incidents events captured under the prior rule and it was inadvertently removed in the NPRM. FRA does not believe that this clarifying amendment increases the burden on railroads because it is consistent with the FRA's 2003 Final Rule, the 2003 FRA Guide, common industry practice, as well as FRA's long-standing policy.

Amtrak's comments suggested that FRA's definition creates a geographic presumption of work-relatedness. However, for an injury or illness to be reportable, an event or exposure arising from the operation of the railroad must be a discernable cause. As such, it is not enough that the signs or symptoms of an injury or illness arose in the work environment. *See* Section-by-Section Analysis for § 225.5, "Definition—Work related."

The final rule makes a technical amendment to the definition of "General reporting criteria" to include criteria number [225.19(d)] (6), "Illness or injury that meets the application of any of the [enumerated] specific case criteria," which was inadvertently omitted in FRA's 2003 Final Rule.

The final rule also revises the definition of "Highway-rail grade crossing" to mean a location where a public highway, road, street, or a private roadway, including associated sidewalks, crosses one or more railroad tracks at grade, or a location where a pathway explicitly authorized by a public authority or railroad carrier that is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks at grade. The definition further provides that the term "sidewalk" means that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or, on easements of private property, that portion of a street that is paved or improved and intended for use by pedestrians.

Although this revision was not expressly addressed in the NPRM, it is consistent with FRA's long-standing practice as well as the Railroad Safety Improvement Act of 2008 (the "RSIA"). Specifically, sections 2 and 204 of the RSIA define "crossing" to include such pathway crossings. Furthermore, section 209 of the RSIA requires that FRA audit railroads to ensure that all grade crossing collisions and fatalities are properly reported. Thus, FRA's audits must review railroad records to ensure that crossings, including such pathway crossing accidents/incidents, are reported. The final rule's definition makes FRA's regulations consistent with the RSIA's requirements and enables accurate auditing and reporting. Moreover, FRA proposed revisions to the definition of "Accident/Incident" with respect to impacts at highway-rail grade crossings, and received comments on the proposal. FRA's responses to those comments are discussed above.

The final rule defines "Injury or illness" to mean an "abnormal condition or disorder," (this is consistent with OSHA's definition at 29 CFR 1904.46). FRA is adding the definition to provide examples of injuries and illnesses and to clarify that pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6). *See* OSHA's Final Rule, 66 FR 5916, 6080, January 19, 2001. The final rule also amends the definition to clarify that a musculoskeletal disorder (MSD) is an injury or illness. *See* OSHA's Final Rule, 66 FR 5916, 6017, January 19, 2001 and 68 FR 38601, 38602, June 30, 2003. The addition of the definition is not a substantive change to FRA's current accident/incident recording and reporting requirements. Rather, the final rule added the definition in an effort to eliminate confusion as to what constitutes an injury or illness. FRA also wishes to emphasize that injuries and illnesses are reportable only if they are new cases discernably caused or significantly aggravated by an event or exposure arising from the operation of a railroad, that meet one or more of the general reporting criteria.

In response to the NPRM, FRA received comments that asserted that the proposed definition was not consistent with OSHA because pain and MSDs are not injuries or illnesses. However, in the OSHA Letter, OSHA confirmed FRA's understanding that "pain is an injury or illness * * * when it is sufficiently severe to meet the general reporting criteria" and that the MSDs are injuries and illnesses as they constitute "abnormal conditions." OSHA Letter at 4.

Commenters also stated that the proposed definition is overly broad and would require the railroads to report minor injuries and illnesses. Because the injury or illness must still meet the general reporting criteria, FRA will not be capturing minor injuries and illnesses. Moreover, these amendments are clarifications and do not alter the railroads' current responsibilities. FRA uses all of this information, including information about MSDs and lower back pain, to identify health and safety risks arising from railroad operations.

Other commenters suggested that the experience of pain in the work environment should not be considered an injury as the person might simply be experiencing pain as the result of an injury or illness that was caused by an event or exposure not arising from the operation of the railroad. UP argued, for example, that a person may experience pain simply as a result of age or psychological reasons. The final rule does not require railroads to report injuries or illnesses that are not caused by an event or exposure in the work environment. Thus, signs or symptoms of a prior injury or illness that simply manifest within the work environment or on property owned, leased, operated over or maintained by railroad, are not reportable. Pain is only reportable when an event or exposure arising from the operation of the railroad is a discernable cause of that pain or significantly aggravated that pain and it meets the general reporting criteria.

Several commenters stated that the term "abnormal condition" is not clear. This terminology is consistent with OSHA's requirements. Moreover, FRA believes that the term is, in fact, clear and requires railroads to report adverse medical conditions caused by events or exposures arising from the operation of the railroad. This definition, in addition to the examples, provides sufficient guidance for railroads to properly identify reportable injuries and illnesses. UP stated that the definition was vague and unclear, and, as a result, UP suggested a definition based upon diagnostic criteria. An injury or illness that is simply the result of events or exposures outside of the work environment is not reportable. Thus, an injury that is simply the result of the aging process is not reportable. Moreover, an injury or illness must be caused by an event or exposure arising from the operation of the railroad. Thus, if an event or exposure arising from the operation of the railroad significantly aggravated a preexisting condition or if the person is more susceptible to an injury or illness discernably caused by an event or exposure arising from the operation of the railroad due to age, then the injury or illness is reportable. As the workforce ages, FRA is interested in learning more about the impact on these demographics and work place safety. As such, FRA believes that the definition contained in the final rule is appropriate.

The final rule amends the definition of "New case" to apply to all persons rather than only to employees. Correspondingly, the final rule replaces the phrase "in the work environment" with "arising from the operation of a railroad," because the term "work environment" applies only to

employees. This revision is consistent with the statutory requirement that railroads report to FRA "all accidents and incidents resulting in injury or death to an individual * * * arising from the carrier's operations during the month," not just accidents and incidents resulting in injury or death to railroad employees. *See* 49 U.S.C. 20901. FRA believes that this amendment does not affect the reporting requirements. The final rule also includes the descriptor "discernably" before the word "caused" in order to maintain consistency within part 225.

Commenters to the NPRM stated that the amendments to the definition of "New case" inappropriately expanded the definition to apply to all persons and, in so doing, would create significant costs and reporting burdens. While the amendments do expand "New case" to address persons beyond employees, the changes are meant to make the definition consistent with the statutory requirement that railroads report casualties to all persons. 49 U.S.C. 20901. Moreover, expanding the term "New case" to address casualties to non-employees should not create significant additional burdens as the revision is meant to provide guidance to the railroads about when a new record or report must be created and when the railroads should only update a previously created record or report for an "existing case." As such, railroads need only make a new record or report when it is a "new case" and may simply update a record or report for an "existing case."

The final rule also amends the definition of "Qualified health care professional" by removing the otolaryngologist example (which had stated: "[f]or example, an otolaryngologist is qualified to diagnose a case of noise induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of repetitive motion injuries."). The final rule removes this example in order to clarify that physicians are not limited by their specialty and may diagnosis conditions while operating within the scope of their license, registration, or certification. As such, as a licensed physician, an otolaryngologist may diagnose conditions other than those related to the ear, nose, and throat. A comment to the NPRM stated that the example should not be removed, that doctors should not be able to diagnosis conditions outside of their specialty, and that the example should be amended from referencing "repetitive motion injuries" to "work-related musculoskeletal disorders." As noted, the final rule clarifies that physicians may diagnose conditions outside of their specialty while operating within the scope of their license, registration, or certification. This position is consistent with the current rule; however, the otolaryngologist example created confusion (which is why it was removed).

The final rule revises the definition of "Railroad." Currently, part 225 defines "railroad" as "a person providing railroad transportation." In order to attain better consistency with Congress' 1994 revisions to 49 U.S.C. 20102, the final rule defines "railroad" to mean "a railroad carrier," and adds a definition to § 225.5 for "railroad carrier" to mean a "person providing railroad transportation." Congress added the term "Railroad carrier" to 49 U.S.C. 20102 in 1994 (Pub. L. 103–272, 108 Stat 745), as part of a larger effort "[t]o restate the laws related to transportation in one comprehensive title" and "attain uniformity [of language] within the title." *See* House Report No. 103–180 at 3, reprinted in 1994 U.S.C.C.A.N. 818, 820. Specifically, Congress defined "railroad carrier" at 49 U.S.C. 20102 (2) as a "person providing railroad transportation," in order to "distinguish between railroad transportation and the entity providing railroad transportation." *See* House Report No. 103–180 at 79, reprinted in 1994 U.S.C.C.A.N. 818, 898. FRA's definition of "railroad transportation" remains unchanged.

The final rule adds a definition for "Significant aggravation of a pre-existing injury or illness." This definition is consistent with both OSHA's definition as set forth at 29 CFR 1904.5(b)(4) and the current version (effective May 1, 2003) of the FRA Guide. FRA has added this definition to § 225.5 for clarification and ease of reference.

The final rule further clarifies that the provisions concerning days away from work and restricted duty only relate to railroad employees. This clarifying amendment was made in response to a comment requesting additional clarification about whether these provisions apply to "any person." This amendment is consistent with the reporting criteria found in § 225.19 and will not create any additional burden on the railroads.

Commenters stated that the definition for "Significant aggravation of a pre-existing injury or illness" is not consistent with the OSHA definition. Specifically, Amtrak argued that FRA's definition is different than OSHA's because it contains the term "discernable cause." However, FRA included this language for clarity and the definition is, in fact, consistent with OSHA's language. Pursuant to the OSHA–NAM Agreement, a case "is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to [sic] preexisting condition."

Amtrak further argued that FRA's removal of "occupational" preceding the phrase "event or exposure" is also inconsistent with OSHA. This revision is consistent with the statutory requirement that railroads report to FRA "all accidents and incidents resulting in injury or death to an individual arising from the carrier's operations during the month," not just accidents and incidents resulting in injury or death to railroad employees. *See* 49 U.S.C. 20901. While OSHA only captures information relating to employees, FRA collects and uses information for various classifications of persons. As such, FRA requires railroads to submit information relating to non-employee injuries and illnesses that arise from the operation of the railroad.

The final rule also adds a definition for "Suicide data." Consistent with FRA's decision to remove suicide and attempted suicide from its current § 225.15 reporting exceptions (*see* Section-by-Section Analysis for 225.15, "Accidents/Incident not to be reported"), and to begin collecting suicide related data, FRA is adding to § 225.5 a definition for "Suicide data." In the NPRM, FRA proposed that "Suicide data" mean data regarding the death of an individual due to that individual's commission of suicide as determined by a coroner or other public authority; or injury to an individual due to that individual's attempted commission of suicide as determined by a public authority.

The final rule revises the definition of "Suicide data" to mean "data regarding the death of an individual due to the individual's commission of suicide as determined by a coroner, public police officer or other public authority; or injury to an individual due to that individual's attempted commission of suicide as determined by a public police officer or other public authority." The FRA Guide explains that a "public authority" is a Federal, State or local government entity, such as a public health department, that has the legal authority to declare a fatality a suicide or a casualty to a person as an attempted suicide. Moreover, the FRA Guide provides for what documentation a railroad is required to have to show that a person committed suicide or attempted to commit suicide. *See*

Section-by-Section Analysis for § 225.41, "Suicide data."

FRA emphasizes that only the information about the death of, or injury to, the individual who committed the suicidal act is considered to be suicide data. Thus, information about the death of, or injury to, any other person caused by another person's commission of a suicidal act is not suicide data. FRA will not report suicide data to OSHA. FRA will not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Web site for individual reports or downloads, however, suicide data will be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act. *See* § 225.41, "Suicide data." FRA inspectors and State agencies participating in investigative activities under part 212 will have access to the individual records and reports. *See* § 225.31. States also can obtain individual reports directly from the railroads pursuant to § 225.1.

Commenters requested that FRA clarify what is considered a public authority. As explained above, a "public authority" is a Federal, State or local government entity, such as a public health department, that has the legal authority to declare a fatality a suicide or a casualty to a person an attempted suicide. MTA asked whether public authority would include "a railroad police department or other State or local police department." FRA does not consider a railroad police officer a public authority within the meaning of those terms. Another commenter suggested using the phrase "appropriately qualified public authority" to define public authority. FRA believes that the revised definition provides sufficient clarity as to what is considered a public authority.

Commenters also suggested that collecting this information (*e.g.,* a coroner's report) is time consuming and that FRA should consider this fact when requiring that a railroad complete the relevant forms within a specific period of time. FRA acknowledges that it may take additional time to confirm cause of death. As explained, FRA needs this information to prevent future casualties and to improve rail safety. However, after acquiring knowledge that a reportable injury or illness occurred, a railroad must create a Form FRA F 6180.55a for reportable injury and illness within thirty days after the expiration of the month during which the accidents/incidents occurred. As such, a railroad may submit the report as a fatality if a final determination with regard to cause of death has not yet been reached and, at a later time, update and amend the record or report once the railroad is able to confirm cause of death. If a railroad is unable to confirm whether an individual committed suicide at the end of the investigative period, the deceased should be listed as the applicable type person (*e.g.,* trespasser, non-trespasser). FRA allows railroads to accept verbal confirmation of an attempted suicide or suicide from a public authority, so long as the railroad documents in writing the specifics of the conversation and creates the required audit trail, as explained in the FRA Guide, rather than requiring written confirmation from the public police officer, coroner or other public authority. *See* Section-by-Section Analysis for § 225.41, "Suicide data."

The final rule revises the definition of "Work environment" to explain that the work environment means the establishment and other locations where one or more railroad employees are working or are present as a condition of employment. This revision provides additional clarity and better conforms FRA's definition with OSHA's definition at 29 CFR 1904.5(b)(1).

The final rule revises the definition of "Work-related" by removing the words "incident, activity, or the like" and replacing them with "event or exposure" because the definition of "event or exposure" in this section encompasses those terms. The definition explains that an injury or illness is presumed work-related if an event or exposure in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The causal event need not be peculiarly occupational in nature so long as it occurs in the work environment, and is a discernable cause (*i.e.,* contributory factor). Further, the final rule states that if an injury or illness is within the presumption, the employer can rebut the work-relatedness only by showing that the case falls within an exception listed in 49 CFR 225.15. This presumption is consistent with the NAM–OSHA settlement agreement, 66 FR 66943, December 27, 2001, and with OSHA's regulations which require that "[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." 29 CFR 1904.5(a). That regulation goes on to explain that "[w]ork-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b) specifically applies." *Id.* at 29 CFR 1904.5(b)(2), OSHA also sets forth nine exceptions to its injury and illness reporting requirements. The final rule sets forth all FRA accident/incident reporting exceptions in § 225.15. *See* Section-by-Section Analysis for § 225.15, "Accidents/Incident not to be reported."

In addition, in cases where it is not obvious whether a precipitating event or exposure occurred in the work environment, the employer must evaluate the employee's work duties and environment to decide whether it is more likely than not that an event or exposure in the work environment contributed to the employee's injury or illness. FRA's requirement is consistent with the NAM–OSHA settlement agreement and OSHA's regulations at 29 CFR 1904.5(b)(3), in which OSHA addresses how an employer should handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment, stating "in these situations, [the employer] must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition."

FRA also wishes to clarify that an event or exposure that occurs in the work environment need not have a clear connection to a specific work activity, condition, or substance that is peculiar to the railroad transportation business in order be an "event or exposure arising from the operation of a railroad." Examples of events or exposures arising from the operation of a railroad include an employee tripping for no apparent reason while walking across a level floor; an employee being sexually assaulted by a co-worker; or an employee being injured by an act of violence perpetrated by one co-worker against a third party. *See* OSHA's 2001 Rule, 66 FR 5916, 5946, January 19, 2001. In such cases, the employee's job-related tasks and exposures did not create or contribute to the risk that an injury or illness would occur. *Id.* Rather, these activities are events or exposures arising from the operation of a railroad because they occurred in the work environment. Likewise, normal body movements (*e.g.,* walking, climbing a staircase, bending, sneezing) engaged in

by an employee at the time of injury are also events arising from the operation of a railroad, even if the body movement is not related to the employee's job-related tasks. *See* 66 FR 5916, 5957–5958, January 19, 2001. Correspondingly, events or exposures involving contractors or volunteers, that occur on property owned, leased, operated over or maintained by the railroad, also arise from the operation of a railroad, even if they do not have a clear connection to a specific work activity, condition, or substance that is peculiar to the railroad transportation business.

UP contests the work-relatedness presumption. However, the final rule specifically adopts a presumption of work-relatedness that is identical to OSHA's presumption to provide uniformity in reporting requirements between OSHA and FRA and amongst railroads. Moreover, this allows railroads to report to one agency, FRA. In addition, uniform reporting requirements allow for comparing safety trends across industries and among railroads.

UP also suggests that a method/evidence-based approach should be employed. UP proposes that an injury or illness is considered work-related if "1. The medical findings of disease or injury are compatible with the effects of a disease-producing agent or an injury producing event to which the worker has been exposed; 2. Sufficient exposure is present in the worker's occupational environment to have caused the disease; and 3. The weight of the evidence supports the disease as having occupational rather than non-occupational origin." Alternatively, BNSF suggested using the NIOSH approach when causation is not obvious. As explained above, under part 225, the railroad must decide whether, considering the circumstances, it is more likely than not that an event or exposure arising from the operation of the railroad is a discernable cause of an injury or illness. If an event or exposure is a discernable cause, then the injury or illness is presumed to be work-related. Under this approach, a railroad may consider the various unique factors associated with each employee's potentially work-related injury or illness, including, but not limited to, an employee's medical and work history, in addition to an employee's statements regarding his or her injury or illness.

Other commenters stated that the definition creates a geographic presumption because experiencing pain in the work environment is sufficient to make an injury or illness work-related and reportable. Contrary to this assertion, the final rule does not create a "geographic presumption," as the event or exposure arising from the operation of the railroad must be a cause of the injury or illness; and, therefore, the manifestation of a sign or symptom in the work environment, by itself, does not make an injury work-related. Similarly, comments stated that the definition is so broad that everything is work-related. Again, an injury or illness is not work-related unless an event or exposure arising from the work environment is a discernable cause, and it meets one of the general reporting criteria. Moreover, FRA's definition of work-relatedness is consistent with OSHA's definition and enables OSHA and FRA to compare safety trends across industries.

Commenters stated that FRA should collect information about only injuries and illnesses caused by "occupational" events or exposures. UP claimed that, when railroads are required to report injuries or illnesses that result from non-occupational events, that data will not improve railroad safety. Commenters also stated that FRA is not collecting data about the hazards and risks actually associated with the railroad industry. For employee injuries and illnesses, OSHA does not require that the event or exposure be occupational in nature. Again, adopting OSHA's approach allows the railroads to report to one agency, FRA, and, so long as FRA maintains reporting requirements consistent with those of OSHA, FRA's regulations also allow for comparing safety trends between industries. Finally, FRA uses the information regarding injuries and illnesses that are not solely occupational in nature to improve safety and to more fully understand injuries and illnesses in the work environment.

§ 225.6 Consolidated Reporting

The final rule adds § 225.6, which provides an option for consolidated railroad accident/incident reporting for certain integrated railroad systems.

Section 20901 of title 49 of the United States Code requires that each "railroad carrier" submit to FRA a monthly report of its accidents/incidents. A "railroad carrier" is defined by 49 U.S.C. 20102 as a "person providing railroad transportation, except that, upon petition by a group of commonly controlled railroad carriers that the Secretary determines is operating within the United States as a single, integrated rail system, the Secretary may by order treat the group of railroad carriers as a single railroad carrier for purposes of one or more provisions of part A, subtitle V of this title and implementing regulations and order, subject to any appropriate conditions that the Secretary may impose." "Person," as defined by 1 U.S.C. 1, "include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

The final rule provides that a parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of part 225 compliance. The written request must provide a list of the subsidiary railroads controlled by the parent corporation and an explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system. If FRA grants such a request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, consenting to assume responsibility for compliance with part 225 for all named subsidiaries making up the system, and consenting to guarantee any liabilities owed to the United States government that are incurred by its named subsidiaries for violating part 225. Any change in the subsidiaries making up such a railroad system will require immediate notification to FRA and the execution of an amended agreement. In addition, executed agreements will be published in the docket.

FRA's final rule is consistent with the Surface Transportation Board's (STB) decision in Ex Parte No. 634 (Proposal to Require Consolidated Reporting by Commonly Controlled Railroads) (November 7, 2001). In this decision, STB required that each group of railroads that operate as a single, integrated United States rail system whose cumulative operating revenues meet the Class I threshold, submit consolidated annual financial reports that combine the operations of all their commonly controlled railroads that operate as an integrated rail system within the United States.

Commenters to the NPRM suggested that this revision will dilute reporting, and make it more difficult to compare trends and to identify problems. However, FRA believes that this revision will, in fact, enable the agency to gather more meaningful and accurate data. One comment also sought additional clarification on who can use consolidated reporting. Again, as discussed, a parent corporation may request consolidated reporting where its commonly controlled railroad carriers operate as a single, seamless, integrated

United States rail system. In addition, the STB decision, referenced above, provides further clarification.

§ 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

The final rule amends the accident/incident telephonic reporting requirements related to fatalities that occur at highway-rail grade crossings as a result of train accidents or train incidents. FRA had required railroads to report immediately to the National Response Center (NRC), via telephone, "a fatality at a highway-rail grade crossing as a result of a train accident or train incident." 49 CFR 225.9(a)(2)(iii). FRA has found that confusion exists as to the applicability of this requirement when death does not occur at the scene of the accident/incident, but occurs several hours or days later, after the fatally injured person is taken to the hospital for treatment.

As a result, the final rule revises the telephonic reporting requirement for highway-rail grade crossing fatalities to require telephonic reporting only if death occurs within 24 hours of the accident/incident. This revision is consistent with the Department of Transportation, Office of Inspector General's November 28, 2005 recommendation (Report No. MH–2006–016), which recommended that FRA amend § 225.9 to clarify the reporting requirements and to include criteria requiring railroads to report to NRC any death at a highway-rail grade crossing, only if death occurs within 24 hours of the accident/incident.

The final rule also makes a technical amendment to paragraph (a)(2)(iv) by adding the words "or more" after $150,000, to clarify that the telephonic reporting requirement is triggered when a train accident results in damage of $150,000 or more to railroad and non-railroad property.

In the NPRM, FRA requested comments and suggestions on four issues of concern. One of these issues was § 225.9 telephonic reporting. Specifically, the NPRM noted that FRA was considering changing the method by which telephonic reports of accidents/incidents, as required by § 225.9, are made. Under FRA's current regulations, railroads are required to telephonically report certain accidents/incidents to the NRC, who in turn provides notification of the accidents/incidents to FRA. The NPRM indicated that FRA was reviewing whether it would be preferable for railroads to report these accidents/incidents directly to FRA via electronic transmission, and invited comments and suggestions on the issue.

FRA received comments that were generally in favor of reporting such accidents/incidents directly to FRA via electronic transmission. One comment suggested that certain data should be collected, including railroad contact information closely associated with the accident/incident, train equipment identification, and hazardous materials identification. Another comment suggested that railroads should immediately report any type of railroad related fatality, including trespasser fatalities and suicides. After reviewing the issue and the comments, no changes are being made relating to direct reporting because FRA does not currently have the infrastructure to adequately address such reporting. However, FRA will take these comments into consideration in any further evaluation concerning direct reporting.

A commenter suggested that the immediate notification of such fatalities is not necessary because such data is captured in the monthly report submitted to FRA. FRA believes, however, that immediate reporting is necessary so that FRA has the opportunity to physically investigate the accident/incident before the scene is cleared. Such reporting ultimately results in the creation of more accurate data. A comment to the NPRM also suggested that a railroad cannot easily determine whether there has been a fatality if the individual does not die at the scene of the accident/incident. FRA believes that railroads must take reasonable steps to learn whether a fatality occurred within 24 hours of the highway-rail grade crossing accident/incident. Under the current regulation at § 225.9, there is no such time limit. As such, the final rule lessens the burden on the railroads to follow-up on such accidents/incidents under § 225.9 by only requiring railroads to report if a fatality occurs within 24 hours. As discussed, this final rule is consistent with the Department of Transportation, Office of Inspector General's November 28, 2005 recommendation (Report No. MH–2006–016). A comment to the NPRM also suggested that such reports be made electronically, rather than telephonically, to allow for greater efficiency and accuracy. FRA does not currently have the infrastructure to accommodate this suggestion. FRA does, however, currently receive electronic updates after the initial report to the NRC, which ensures that FRA has all of the relevant information. Lastly, a comment to the NPRM suggested that "horrible injuries" should also be reported under § 225.9. The final rule does not adopt this suggestion because the phrase "horrible injuries" is vague, would be difficult to enforce, and FRA Form F 6180.55a captures information relating to the nature of the injury.

The final rule also revises the Telephonic Reporting Chart contained in the FRA Guide, Appendix M in order to make it consistent with the final rule text as the chart contained in the 2003 Final Rule was not consistent with the regulatory text. These amendments are clarifying in nature, and will impose no additional burden on railroads. *See* FRA Guide for additional information.

§ 225.11 Reporting of Accidents/Incidents

In this section, the final rule lists each primary accident/incident group described in § 225.19 (*i.e.,* Highway-rail grade crossing; Rail equipment; and Death, injury and occupational illness) by subsection. By identifying each group of accidents/incidents with a different subsection, FRA will be better able to access data and differentiate among data elements. For example, currently, if FRA issues a violation against a railroad for alleged non-compliance with § 225.11, FRA's case tracking database captures this as a violation of § 225.11. With such limited information, FRA is unable to easily identify what type of reporting non-compliance is alleged (*e.g.,* failure to report a highway-rail grade crossing accident/incident; failure to report a rail equipment accident/incident or failure to report an accident/incident involving a death, injury or occupational illness). This final rule provides FRA with better and more useful data, while also providing quicker access to such data.

The final rule also updates this section to reflect the revised provisions in § 225.37 regarding filing accident/incident reports with FRA via optical media (CD–ROM) and electronically via the Internet.

§ 225.15 Accidents/Incidents Not To Be Reported

In this section, § 225.15 is revised to include a comprehensive list of injury/illness and rail equipment accident/incident reporting exceptions (formerly listed partially in § 225.15 and in the 2003 FRA Guide). As discussed in the Section-by-Section Analysis of § 225.5, "Definitions" with respect to the definition of "Work-relatedness," OSHA's regulations require that "[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." 29

CFR 1904.5(a). OSHA's regulation goes on to explain that "[w]ork-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b) specifically applies." 29 CFR 1904.5(a). FRA established certain reporting exceptions in § 225.15 in FRA's 2003 Final Rule and also adopted OSHA's reporting exceptions in the 2003 FRA Guide.

FRA's list of exceptions in this final rule includes both the FRA created exceptions and the exceptions set forth by OSHA at 29 CFR 1904.5(b) as adopted by FRA. FRA reviewed the applicability of each injury and illness reporting exception as related to the class of injured person, and incorporates this information into the final rule text.

In making this revision, FRA leaves paragraph (a) substantively unchanged.

In paragraph (b), FRA addresses reporting exceptions for Worker on Duty—Employee (Class A) injuries and illnesses. Paragraph (b) retains the current paragraph (b)(1) reporting exception relating to injuries and illnesses occurring in living quarters. The final rule also adds additional reporting exceptions applicable to Worker on Duty—Employee (Class A) (paragraphs (b)(2) through (b)(3)). The final rule also revises the NPRM language to clarify that these exceptions do not affect a railroad's obligation to evaluate and report those injuries and illnesses as another class of persons (*i.e.,* Employee not on duty (Class B); Passenger on Trains (Class C); Nontrespassers-On Railroad Property (Class D); Trespassers (Class E)), rather than as only Employee Not On Duty (Class B). For example, an employer who is present in the work environment as a member of the general public and is injured may qualify as a Class C or Class D person, rather than as a Class B person. This is a clarifying amendment; therefore, it should not alter railroads' reporting responsibilities and is consistent with the exceptions contained in FRA's 2003 Final Rule and 2003 FRA Guide.

Paragraph (c) contains reporting exceptions applicable to all employees (whether on or off duty). With respect to the reporting exception listed in paragraph (c)(3), FRA wishes to clarify that an injury or illness that is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption is not reportable. It does not matter if the employee bought the food on the employer's premises or brought the food into work. For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. If, however, the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered reportable if the case meets the general reporting criteria set forth at § 225.19(d)(1)–(d)(6). With respect to the reporting exception listed in paragraph (c)(5), self-inflicted casualties do not need to be reported except that, for FRA reporting purposes, a railroad will still be responsible for reporting or recording self-inflicted casualties that are determined to be suicides and attempted suicides that qualify as accountable or reportable. FRA will not be providing suicide data to DOL.

In paragraph (d), FRA addresses the applicability of the reporting exceptions listed in paragraph (b) and (c) to contractors and volunteers. The reporting exceptions for employee injuries and illnesses apply equally to volunteer injuries and illnesses and to contractor injuries (contractor illnesses are not reportable to FRA). Because an injury to a contractor, or injury to or illness of a volunteer, must occur on property owned, leased, operated over or maintained by the railroad (rather than in the work environment), any reference to the term "work environment" in paragraph (b) is construed to mean, for the purposes of paragraph (d) only, on property owned, leased, operated over, or maintained by the railroad. The application of the exceptions as stated in paragraph (d) do not reflect any change to FRA's provisions, but is included to clarify the applicability of the reporting exceptions to contractors and volunteers. Consistent with the changes made to the definition of "event or exposure arising from the operation of the railroad," paragraph (d) was amended to include the term "operated over." FRA does not believe that this clarifying amendment increases the burden on railroads because it is consistent with common industry practice as well as FRA's long-standing policy.

Lastly, paragraph (e) addresses reporting exceptions for rail equipment accidents/incidents which were included in the 2003 FRA Guide.

The agency believes that the incorporation of these exceptions into the rule will provide a better understanding of FRA's employee injury and illness reporting requirements. Again, the reporting exceptions do not affect a railroad's obligation to maintain records of accidents/incidents as required by § 225.25 (Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," and Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record"), as applicable.

The final rule also eliminates from the reporting exceptions suicides and attempted suicides. In doing so, FRA is requiring that casualties due to suicides and attempted suicides, that arise from the operation of the railroad and meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6), be reported to the agency on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)," as a new category of data called "suicide data." In addition, casualties due to suicides and attempted suicides that arise from the operation of the railroad and meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6) should be included on Form FRA F 6180.55, "Railroad Injury and Illness Summary," in Field 18, Reported Casualties. Under this system, a reportable injury caused as a result of a suicidal act is reported to FRA regardless of the need for other reporting of the event (*i.e.,* the suicide resulted in a reportable train accident or highway-rail grade crossing collision). FRA will not report such suicide data cases to DOL. FRA will also not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. Instead, FRA will maintain such suicide data in a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will, however, be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act (FOIA). For additional information about FOIA requests, see FRA's Web site at *http://www.fra.dot.gov/us/foia.* Suicide data will be available to FRA's inspectors and other authorized representatives, including State agencies participating in investigative surveillance activities under part 212. *See* Section-by-Section Analysis for § 225.41, "Suicide data." States will also be able to obtain individual reports directly from the railroads pursuant to § 225.1. *See* § 225.1, "Suicide data;" *see also* Section-by-Section Analysis for § 225.1, "Suicide data."

In addition, casualties due to suicides and attempted suicides that arise from the operation of the railroad and meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6) shall also be included in Field 18, Reported Casualties, on Forms FRA F 6180.55,

"Railroad Injury and Illness Summary." This will allow FRA to verify the number of forms submitted with the count listed on the form. The railroad should report the person by the "type of person" regardless of the fact that it is suicide data. As such, if a trespasser commits suicide on the railroad, the railroad should report it as a trespasser fatality. *See* FRA Guide, Chapter 3.

Suicide data counts will also be included in casualty counts on Forms FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report," and FRA F 6180.54, "Rail Equipment Accident/Incident Report," so that the number of casualties reported to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)," for the month is consistent with the number of casualties reported to FRA on each of these accident/incident reporting forms. In addition, suicide data counts will also be included in casualty counts on Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record." *See* § 225.41, "Suicide data;" *see also* Section-by-Section Analysis for § 225.5, "Definitions," and the FRA Guide, for additional information.

UP requested that highway-rail grade crossing accident/incidents that result from suicides or attempted suicides not be included on the Form FRA F 6180.57. As explained above, the final rule requires the inclusion of this information on the Form FRA F 6180.57 so that the number of casualties is consistent with the number of casualties on Form FRA F 6180.55a and on the Form FRA F 6180.54 that might also be required for the same incident. In addition, FRA only excludes the individuals who committed or attempted suicide and, therefore, casualties to others involved in the same incident as a result of the suicidal act may be reportable. Moreover, a Form FRA F 6180.57 must be created for any impact regardless of cause or intent. The Form FRA F 6180.57 does not require any Personal Identifying Information (PII) and, as such, FRA is not as concerned about making the individual forms available to the public. *See* FRA Guide.

FRA believes that it is important to collect data on suicides. Death by suicide is a national problem as indicated by the fact that more than 30,000 Americans die by suicide each year. Currently, there are no reliable reports about how many of these deaths occur on railroad property. The CPUC indicates that more than 55 percent of pedestrian railroad fatalities in California are attributed to suicide, and according to the American Association of Suicidology, railroads that have tracked probable suicides on the rail system report that suicides are responsible for 39 percent of pedestrian fatalities. Additionally, a March 3, 2005, Chicago Tribune article, "Suicide is Top Cause of Train Track Deaths; State Looks for Ways to Prevent Fatalities," indicates that, in 2004, there were 30 probable suicide deaths and an additional three attempts involving trains in Chicago alone, and that suicide was the leading cause of rail-related fatalities in Illinois for 2004, which led Illinois to implement a systematic tracking program of such incidents on rail property. This information illustrates that there are a large number of fatalities occurring on railroad property without any national initiative to collect data that might be used to address these events.

Since it appears that suicides contribute significantly to the total number of fatalities that are occurring on railroad tracks, it is appropriate to report and collect data about suicides in addition to the other causes of death in the industry. By requiring that the information be reported as suicide data, these fatalities will not be included in the normally reported fatality data. This new data may help FRA, organizations promoting safety on and around railroad property, and suicide prevention agencies assess the problem and develop programs to decrease the incidence of suicides by train.

FRA notes that the collection of suicide data will also aid the Federal Transit Administration (FTA) in its collection and analysis of commuter railroad accidents, since FRA provides certain commuter railroad safety data to FTA. FTA relies on FRA to provide to it data on the types of accidents occurring on commuter rail, their primary causes, and the consequences, in terms of fatalities (which for FTA includes suicides under 49 CFR part 659), injuries and property damage. The data FRA provides to FTA, however, is somewhat incomplete, in that FRA cannot provide suicide data to FTA. Consequently, FTA, which uses this information to better inform their assessments of safety plans and hazard analysis performed by commuter rail grantees applying for FTA grants, must work with an incomplete data set.

Comments suggested that the collection of suicide data would create a duty on the part of the railroad to those individuals attempting to commit suicide as the railroads would now be aware of potential suicide hotspots. However, prior to this Final Rule, railroads were exempt from reporting suicides and attempted suicides. In order to exclude suicides and attempted suicides, railroads were required to prove cause of death by obtaining relevant documents to prove that a casualty was an attempted suicide or suicide. Consequently, railroads should already have knowledge of where suicides and attempted suicides are taking place. Therefore, the final rule does not create a new duty for the railroads, rather it simply requires them to compile the data. Ultimately, by collecting this information, FRA and other government agencies will be able to decrease the number of suicides and attempted suicides occurring on the railroad.

Amtrak stated in its comments that persons entering railroad property to commit suicide are considered trespassers and the suicide is considered a superseding event. As such, Amtrak claims that an event or exposure arising from the operation of the railroad is not a cause. Consistent with OSHA, FRA maintains a no fault reporting system. As such, it does not matter whether the person caused their own injury so long as the event or exposure arising from the operation of the railroad is a discernable cause and it meets the general reporting criteria. And, the collection of this data will help to decrease the number of suicides and attempted suicides that occur each year. Moreover, FRA will not be providing this information to DOL.

Commenters suggested that the collection of suicide data will not improve safety. As stated above, FRA believes that there are many benefits to collecting this information. Specifically, FRA will be able to determine where and how many suicides are occurring on the railroad. Suicides will be segregated from other fatalities, avoiding an over count of fatalities associated with railroad operations, and data will be gathered systematically so that others may use the data to design interventions.

In order for FRA to capture suicide data, the final rule requires railroads to indicate suicide or attempted suicide on Forms FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet);" FRA F 6180.54, "Rail Equipment Accident/Incident Report;" and FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report;" as follows:

(1) *Form FRA F 6180.55a*—The final rule requires that an "X," representative of "suicide or attempted suicide," be placed in "Special Cause Code" block 5r, when applicable. The final rule also changes the title of block 5m from "Result" to "Tools." This change is a correction to the current form and is

necessary to maintain consistency with types of Circumstance Codes in Appendix F of the FRA Guide.

(2) *Form FRA F 6180.54*—The final rule adds four Miscellaneous Cause Codes for use in block 38 as follows: (i) Code M309 "Suicide (Highway-Rail Grade Crossing Accident);" (ii) Code M310 "Attempted Suicide (Highway-Rail Grade Crossing Accident);" (iii) Code M509 "Suicide (Other Misc.);" and (iv) Code M510 "Attempted Suicide (Other Misc.)." These codes are added to Appendix C, "Train Accident Cause Codes" to refer to "Suicide or Attempted Suicide" for use in "Primary Cause Code" block 38. The final rule also requires railroads to include suicides and attempted suicides in the casualty counts in blocks 46, 47, and 48, as applicable.

(3) *Form FRA F 6180.57*—The final rule adds a code for "Suicide or Attempted Suicide" to block 41 (the final rule also changes, among other things, the title of block 41 from "Driver" to "Highway User."). In addition, the final rule requires railroads to include suicides and attempted suicides, when appropriate, in the casualty counts in block numbers 46, 49, and 52. *See* FRA Guide for additional information.

In addition, when appropriate, the final rule requires railroads to indicate whether a suicide or an attempted suicide was a cause of an injury or illness or an accident or incident in the applicable narrative or description section on the following forms: FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" and FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record." While employee suicides or attempted suicides are rare, FRA is still interested in capturing that information in order to learn more about suicides and attempted suicides in the work environment.

Commenters inquired as to whether the NPRM's proposed cause codes were sufficient to capture the facts surrounding suicides and attempted suicides. FRA believes that the codes and instructions listed above are sufficient at this time to identify key information. FRA welcomes the inclusion of additional information regarding such accidents/incidents in the applicable form's narrative section (*e.g.,* that the person is homeless).

FRA notes that it is also concerned that suicides are being reported as trespasser fatalities, because some railroads have not always made a reasonable inquiry in their efforts to determine the cause of death. In fact, FRA has found that a number of reported trespasser fatalities are actually suicides. Accordingly, FRA revises Chapter 6 of the FRA Guide to clarify that, in order to fulfill its responsibilities to maintain accuracy in reporting, a railroad must try to obtain verbal or written confirmation of a trespasser's cause of death by contacting the coroner, public police officer or other public authority by telephone and, if unsuccessful in obtaining the needed information by telephone, must follow-up in writing. The railroad must continue its efforts to obtain this information for a period of six months following the month in which the fatality occurred. The railroad must keep a record of its efforts to obtain such confirmation. This record and any documentation related to the case obtained by the railroad must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b). If a railroad cannot obtain confirmation of the cause of death by the end of the six month period, the railroad shall report the fatality as a trespasser fatality.

FRA also revises Chapter 6 of the FRA Guide to clarify what documentation is required to prove that an individual committed suicide or attempted to commit suicide. FRA understands that railroads often have difficulty obtaining copies of death certificates and/or have to wait until the death certificate becomes publicly available. As such, as explained in the FRA Guide, railroads may accept verbal confirmation of a suicide or attempted suicide from a coroner, public police officer, or other public authority. When receiving verbal confirmation of a suicide or attempted suicide, a railroad must create an audit trail of that confirmation so that FRA can independently verify and confirm the determination. As part of this audit trail, for example, the railroad must document the date and time of verbal confirmation in addition to the name, title, address, and telephone number of the person who determined the cause of death or injury.

Commenters stated that this information is too difficult to obtain, and that public authorities will often not cooperate with the railroads. Similarly, SEPTA suggested that the law prevents them from obtaining the written confirmation necessary to prove that a person committed suicide or attempted to commit suicide. However, railroads have been able to obtain this information under the requirements in the 2003 Final Rule and, therefore, FRA expects that they will continue to be able to do so. In addition, FRA hopes that allowing verbal confirmation will ease the railroad's burden. Finally, when investigating a trespasser fatality, if a railroad cannot obtain the required information after making a documented, good faith effort for six months, then the railroad may discontinue its investigation and report the casualty as a trespasser fatality.

Commenters also stated that the follow-up requirements are too burdensome. SEPTA suggested that railroads should only have to follow-up for 3 months, rather than 6 months. Moreover, other comments suggested that only one document request and one follow-up request should be necessary. However, based on past comments, railroads have asserted that public authorities require additional time to conclude that a fatality is a suicide. Therefore, FRA believes that the extended investigation period is necessary. Once a railroad obtains a determination, they may terminate their investigation. The FRA Guide indicates that a railroad must follow-up in writing only if a public authority cannot be reached by telephone, and then must continue such efforts for six months or until they have received confirmation. FRA does not mandate how the continued efforts be conducted, in writing or by telephone, so long as those efforts are documented. Consequently, after attempting to reach the public authority once by phone and in writing, a railroad may select the means by which they continue their investigation. Again, if a railroad cannot obtain the required information after making a documented, good faith effort for six months, then the railroad may discontinue its investigation and report the casualty as a trespasser fatality. Finally, FRA believes that these efforts are necessary based on the past apparent over-reporting of trespasser casualties that were in fact suicides.

§ 225.17 Doubtful Cases

In this section, the final rule amended part 225 by re-designating the "Alcohol or Drug Involvement" provisions, currently contained in § 225.17(d), to a newly added § 225.18. FRA has observed that the inclusion of the two unrelated topics in one section has led to confusion. This revision is intended to reduce possible confusion and does not substantively change FRA's current accident/incident reporting requirements.

§ 225.18 Alcohol or Drug Involvement

As stated above, the final rule adds a new section, § 228.18, re-designating the Alcohol and Drug provisions currently contained in § 225.17(d) to a new section, § 225.18, for purposes of clarity only. The final rule also makes the following technical amendments:

changing the word "title" to "chapter," to reference the correct term; inserting "49 CFR" in front of § 219.209, for clarity; and changing the word "paragraph" to "section," to accommodate the proposed re-designation of § 225.17(d) to § 225.18 (a)–(d).

Commenters suggested that contractors and subcontractors be included in § 225.18. The final rule does not adopt this suggestion because it is outside of the scope of the proposed rulemaking. Specifically, the NPRM did not propose any substantive changes, rather the sections were simply divided into two sections for purposes of clarity, and several technical amendments were made.

§ 225.19 Primary Groups of Accidents/Incidents

In this section, the final rule revises paragraph (d) to clarify the agency's existing reporting requirements for death, injury, and occupational illness and to further conform those requirements to OSHA's recordkeeping and reporting regulations.

As discussed, FRA's accident/incident reporting regulations that concern railroad occupational casualties are maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations in order to enable data comparisons on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. *See* Section-by-Section Analysis for § 225.5, "Definitions" with respect to "Discernable cause." Moreover, maintaining such compatibility allows railroads to only have to report occupational casualties to FRA, rather than to both OSHA and FRA. *See* 29 CFR 1904.3.

With respect to employee injury and illness recording, OSHA's regulations require that "each employer * * * must record each fatality, injury and illness that is work-related; and is a new case; and meets one or more of the general recording criteria * * * or the application to specific cases." 29 CFR 1904.4(a).

By rewording paragraph (d) to more closely model OSHA's wording, the final rule better conforms its reporting requirements to that of OSHA. The final rule also clarifies that only new cases are reportable (the current regulation requires that the injury or illness must be a new case *or* a significant aggravation of a pre-existing injury or illness). The final rule, therefore, requires, that, to be reportable, a significant aggravation of a pre-existing case must be a "new case" (*i.e.,* a case in which either the employee has not previously experienced a *reported* injury or illness of the same type that affects the same part of the body, or the employee previously experienced a *reported* injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear).

The final rule also revises paragraph (d) by amending the general reporting criteria, specifically paragraph (d)(2), which currently states, "injury to any person that results in medical treatment," to include "significant injury to any person" and "loss of consciousness to any person." Failure to include these classes of injuries as reportable for "any person," rather than just railroad employees, in the general criteria in the agency's 2003 Final Rule (68 FR 10107, March 3, 2003) has resulted in FRA not capturing data for non-employees with respect to significant injuries.

Amtrak expressed concern that extending the reporting criteria to non-employees would impose a significant burden on the passenger railroads. As an initial matter, significant injuries are limited to a small number of injuries (*e.g.,* fractured or cracked bone or punctured eardrum), which must be diagnosed by a qualified physician, further narrowing the number of probable cases. In addition, significant injuries are generally serious, and are the type of injuries the railroads should already be investigating, and will generally meet the other general reporting criteria (*i.e.* someone with a broken bone will most likely receive medical treatment). As such, these changes should not substantially increase the investigative duties of the railroad or the number of cases they are reporting. With respect to loss of consciousness cases, railroads will not be required to report cases where the passenger's loss of consciousness is not due to an event or exposure arising from the operation of the railroad. For these reasons, FRA does not believe that the additional reporting criteria for non-employees will significantly increase the number of reportable cases.

In addition, the final rule amends paragraph (d)(6)(E) (previously (d)(6)(v)) to remove the word "independently" for purposes of clarity. As explained in the Section-by-Section Analysis, MSD's are injuries and illnesses under the rule and are subject to the same recording criteria that apply to other injuries and illnesses.

Lastly, the final rule amends paragraph (d)(6) to include covered data cases. The addition of covered data cases to § 225.19(d) is a technical amendment and intended to correct the inadvertent omission of the criteria in the current rule text. The addition does not alter FRA's reporting criteria or its policy on covered data as stated in § 225.39.

§ 225.21 Forms

In this section, the final rule amends paragraph (j) in relation to the use of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related." Specifically, the final rule makes the use of the Form FRA F 6180.107, in place of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," optional, rather than mandatory, and amends and redesignates the instructions for the use of the form currently set forth at § 225.21(j) to § 225.25(i), under the section entitled "Recordkeeping." *See* Section-by-Section Analysis for § 225.25, "Recordkeeping," for additional information and a discussion of the relevant comments.

The final rule also amends this section by adding a paragraph (k) to address the newly created Form FRA F 6180.150, "Highway User Injury Inquiry Form." *See* FRA Guide. Form FRA F 6180.150 shall be used by the railroads in determining whether a highway user suffered a reportable injury or illness in addition complying with part 225's accident/incident requirements. A copy of the Form FRA F 6180.150 shall be sent to each potentially injured highway user, or their representative, involved in a highway-rail grade crossing accident/incident along with a cover letter and a prepaid/preaddressed return envelope. *See* FRA Guide, Chapter 10 for complete instructions. A railroad shall not send a Form FRA F 6180.150 to a highway user, or a highway user's representative, who has died as a result of the accident/incident. The railroad shall complete Part I of Form FRA F 6180.150 and send the form with the completed Part I to the highway user, or their representative. *See* FRA Guide for complete instructions. Moreover, the cover letter shall be drafted in accordance with the instructions contained in the FRA Guide. *See* FRA Guide, Chapter 10.

§ 225.25 Recordkeeping

In this section, the final rule eliminates from paragraph (a) the words "that arise from the operation of the

railroad," in order to maintain conformity with the definition of "accountable injury or illness." *See* Section-by-Section Analysis for § 225.5, "Definitions," for additional information. Moreover, such language is redundant with respect to reportablility, as § 225.19(d) clearly indicates an injury or illness is only reportable if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness.

The final rule also revises the criteria for using Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," and sets forth all of the information that must be included in an alternative railroad-designed record that may be used in lieu of the form.

Prior to FRA's most recent amendments to part 225 in 2003, FRA required that all accountable and reportable injuries and illnesses be recorded on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," or an equivalent record containing the same information. The subset of those cases that qualified for reporting were then reported to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)." If the case was not reported, the railroad was required to state, on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," or the equivalent record, the reason the injury or illness was not reportable. According to the final rule preamble, 68 FR 10107, 10118, March 3, 2003:

> Although this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.
>
> With respect to accounting and reportability under part 225, railroad representatives asserted their concern that mere allegations (*e.g.,* receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They added that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad viewed the claim of work-relatedness as valid.
>
> Although sympathetic to these concerns, FRA was disappointed in the quality of data provided in the past related to occupational illness. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made.

As a result, FRA established, at § 225.25(i)(1), a separate category of claimed occupational illnesses to be recorded on a new form, Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related." This category is comprised of: Illnesses for which there is insufficient information to determine whether the illness is work-related; illnesses for which the railroad has made a preliminary determination that the illness was not work-related; and illnesses for which the railroad has made a final determination that the illness is not work-related.

For any case later determined to be reportable, under § 225.25(i)(2), the railroad has been required to remove the designation "illness claimed to be work-related" and transfer the record to the reporting officer for retention and reporting in the normal manner. In the event the railroad determined the case was not reportable, § 225.25(i)(3) requires that the railroad record an explanation in "narrative" block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," describing the reason(s) the railroad made that determination, making reference to the "most authoritative" information relied upon.

FRA believed that this system of accounting for contested illnesses would focus responsibility for reporting decisions and provide an appropriate audit trail. In addition, FRA thought that it would result in a body of information that could be used for research into the causes of prevalent illnesses, particularly in the case of musculoskeletal disorders. *See* 68 FR 10107, 10118, March 3, 2003. Unfortunately, this has not been the case.

Rather than use the Form FRA F 6180.107 "Alternative Record for Illnesses Claimed to be Work-Related," to record only those illnesses described above, FRA found that railroads were frequently recording all occupational illnesses on Form FRA F 6180.107 as a matter of practice, even before evaluating the sufficiency of information provided and/or work-relatedness. Furthermore, FRA found that railroads were allowing these records to remain unevaluated for several months or more without updating or reviewing them for work-relatedness. Moreover, FRA found that railroads were not creating the Form FRA F 6180.107 record within seven working days after receiving information or acquiring knowledge that an employee asserted an occupational illness, as required by the FRA Guide. Consequently, this system of accounting did not focus responsibility for reporting decisions, did not provide an appropriate audit trail, did not result in a body of information that can be used in the future for research into the causes of prevalent illnesses, and was not helpful in correcting the under-reporting of occupational illnesses to FRA.

In order to correct this problem, the final rule refines the circumstances and procedures related to the recording of claimed occupational illnesses on Form FRA F 6180.107. Specifically, the final rule allows the use of the form to record only those claimed occupational illnesses for which the railroad carrier has not received, from the employee or their representative, information sufficient to determine whether the occupational illness is work-related. The final rule also includes, among other things, requirements that railroads: enter each illness claimed to be work-related on the record no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness; make a good faith effort to obtain information necessary on occupational illness cases to make a reporting decision by December 1 of the next calendar year; document the receipt of new or additional case information in "narrative" block 19 of Form FRA F 6180.107 within fifteen calendar days of receipt, compared to the seven days proposed in the NPRM, and re-evaluate the case in light of the new information within forty-five calendar days of receipt of the information, compared to the thirty days proposed in the NPRM; complete a Form FRA F 6180.98 for any claimed occupational illness case determined to be accountable or reportable within seven calendar days of making such determination; retain the record in accordance with the provisions set forth in § 225.27 and report the illness in accordance with the regular reporting requirements; and provide complete narratives on Form FRA F 6180.107 for those cases the railroad determines are not reportable. The final rule also specifically defines

what data elements an alternative railroad-designed Form FRA F 6180.107 must contain.

Commenters suggested that there is no evidence of underreporting of occupational illnesses and, therefore, the narrowing of the use of the Form FRA F 6180.107 would impose a significant burden on the railroads. As explained above, FRA has found that the railroads have routinely used the Form FRA F 6180.107 to record all occupational illnesses and have failed to review additional evidence for lengthy periods of time, and that use of the form has resulted in the under-reporting of occupational illnesses. FRA believes that it is necessary to limit the use of the form to situations where the cause has not yet been determined, to avoid abuse of the form, to create an up-to-date audit trail, to continue to provide additional time to investigate causation based on the unique nature of occupational illnesses and to ensure that additional evidence is considered within a reasonable period of time.

Many of the commenters critiqued the requirement that railroads update the forms and review additional information within a certain period of time. Several railroads also requested additional time to review new evidence and to update the forms. During the hearing on the NPRM, FRA requested that the railroads provide FRA with a timeframe that they believe is appropriate to update the forms and review additional evidence. AAR suggested that the current reporting timeline, which requires the railroad to update the form by December 1 of the following year, is appropriate. However, AAR also felt that 365 calendar days would be appropriate. In its comments, AAR failed to explain why such a lengthy period of time would be necessary. As explained above, railroads have used the Form FRA F 6180.107 to avoid reporting occupational illness by failing to reconsider additional information and to fully investigate the occupational illness. As such, FRA does not believe railroads need 365 days to simply update a form and to consider new evidence. Upon review, the final rule lengthens the amount of time that the railroads have to review new evidence and to update the Form FRA F 6180.107 from 30 days to 45 days. Moreover, the Form FRA F 6180.107 is an optional form that the railroads may use for occupational illnesses where they have not yet determined the cause of the injury or illness.

AAR also submitted comments suggesting that the railroads should not be required to seek out information on claimed occupational illnesses. Specifically, AAR asserted that there is usually litigation surrounding these types of injuries and, as such, it is difficult to fully investigate the illnesses. Moreover, AAR claims that it will be difficult for FRA to determine whether the railroads made a good faith effort to determine causation. As an initial matter, the railroads' concerns about litigation should not prevent them from making reasonable inquires in addition to updating the Federally required forms as they receive and review new information. However, FRA specifically created the Form FRA F 6180.107 as an alternative form to provide the railroads with additional time to investigate these illnesses because of the unique nature of occupational illnesses and the external delays caused by litigation. Railroads should document their efforts, record new information, and evaluate that new information as required so that FRA can determine whether they are making a good faith effort. Again, the additional requirements are necessary based upon the railroads' past use of the Form FRA F 6180.107 to document all occupational illnesses without making an initial causal determination, even in cases when work-relatedness was obvious, and then failing to update the form when they acquired new information within a reasonable time period.

The final rule amends the requirement at § 225.25(b)(6) so that the alternative railroad-designed record for Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," requires the input of the "Employee identification number" only (eliminating for privacy reasons the employee social security number option). The final rule makes the same amendment to the alternative railroad-designed record for Form FRA F 6180.107, "Alternative Records for Illnesses Claimed to be Work-Related." The final rule also makes corresponding changes for Forms FRA F 6180.98 and 6180.107. *See* FRA Guide.

The final rule replaces the term "log entry" at § 225.25 (b)(28) with "record" and "report" at § 225.25 (e)(28) with "record." Both of these sections refer to "records," specifically alternative railroad-designed Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" and Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record," respectively. This amendment is technical, and is not intended to effect any substantive change.

The final rule also amends the requirements for alternative railroad-designed records by amending § 225.25(b)(28) and (e)(28), and the newly created (j)(25), to reflect that the date required is the initial date the form was signed/completed. FRA finds it necessary to make this change because certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. Consequently, FRA is unable to discern if the railroad entered each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by § 225.25(a) through (e), no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required by § 225.25(f). FRA believes that specifying the date will resolve any confusion regarding the requirement. The final rule creates a similar requirement for the alternative railroad-designed Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," and Forms FRA F 6180.98, 6180.97, and 6180.107. *See* Section-by-Section Analysis for Appendix H, "Forms."

§ 225.27 Retention of records

In this section, the final rule adds a five-year record retention requirement for Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" and Form FRA F 6180.150, "Highway User Injury Inquiry Form." The 2003 Final Rule did not set forth a retention period for the Form FRA F 6180.107 and the Form FRA F 6180.150 is a newly created form. Five years is the same retention period as that of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," and is appropriate for accurate recordkeeping and auditing purposes. In addition, the final rule makes a technical change by restructuring the format of paragraph (a) in order to provide additional clarity.

The final rule also adds a requirement that, in the event a railroad opts to submit their monthly Form FRA F 6180.55, "Railroad Injury and Illness Summary" via optical media or electronically via the Internet, rather than in hard copy, the railroad shall retain the original completed hard copy for a period of five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA via the Internet, the final rule requires the railroad to also retain a hard copy print out of FRA's electronic notice acknowledging receipt of the submission for a period of five years after the calendar year to which the report acknowledged relates. These

requirements are made in light of the new electronic submission options in § 225.37, "Optical media transfer and electronic submission," of this final rule.

The final rule also adds system standards for the electronic retention, by railroads, of accident/incident records. Historically, railroads have retained these records in hard copy form. Railroads may maintain these records electronically, so long as the integrity of the records are maintained. In order to ensure such integrity, the final rule adds minimum system requirements for the electronic retention of accident/incident records. These system standards do not become effective until after October 31, 2011. The final rule establishes this delayed effective date, with respect to this requirement only, to provide railroads with sufficient time to bring any electronic retention systems into compliance.

A commenter stated that railroads do not receive receipts from FRA acknowledging receipt of their electronic reports. FRA is reviewing this issue to ensure that railroads receive such receipts when electronic reports are properly submitted. A commenter also stated that the electronic records retention requirements are redundant and burdensome because railroads will have to retain every minor change, and will also result in a high cost to the railroads to both report and store such reports. However, FRA needs to track the development of these forms for purposes of accurate auditing. In addition, the ability to electronically submit forms should ease any possible burden. Moreover, railroads are already required to store many of these records. And, with respect to the Form FRA F 6180.55, the final rule only seeks an extra 36 months of records (with one report per month, for 36 months). This burden is further eased by the fact that the electronic retention system standards do not go into effect until after October 31, 2011. In addition, railroads are not required to retain records electronically.

§ 225.33 Internal Control Plan

In this section, the final rule clarifies the current ambiguity of element number 11 of the internal control plan to allow railroads to have multiple named custodians and locations of completed Forms FRA F 6180.107, "Alternative Records for Illnesses Claimed to be Work-Related," or the alternate railroad-designed forms and supporting documentation. FRA recognizes that railroads do not necessarily keep completed Claimed Occupational Illness Records in a centralized location, and that different individuals may be responsible for keeping the records. By amending the regulation, railroads will be able to accurately indicate who the custodians are and where the custodians and records are located.

In addition, FRA notes that it published a Notice of Interpretation in the **Federal Register** on March 30, 2009, informing interested parties of its application and enforcement of the harassment or intimidation provisions contained in 49 CFR part 225, specifically relating to situations in which a supervisor or other railroad official accompanies an injured employee into an examination room. *See* 74 FR 14091. FRA includes that Interpretation here for interested parties, as follows:

A. General Principle

Harassment and intimidation occur in violation of § 225.33(a)(1) when a railroad supervisor accompanies an injured employee into an examination room, unless one or more of the exceptions listed in section II(B) of this notice exists.

B. Exceptions

FRA recognizes that there are limited circumstances in which it is appropriate, and indeed preferable, for a supervisor to accompany an injured employee into an examination room. Thus, FRA believes that limited exceptions to the general principle articulated in section II(A) of this notice are necessary. Consequently, FRA recognizes the following limited exceptions:

(1) The injured employee issues a voluntary invitation to the supervisor to accompany him or her in the examination room. The injured employee must issue this invitation freely, without coercion, duress, or intimidation. For example, an injured employee may seek the attendance of a supervisor where the supervisor is a friend. This exception does not encompass invitations issued by third parties, including physicians, unless the invitations are made pursuant to the request of the injured employee.

(2) The injured employee is unconscious or otherwise unable to effectively communicate material information to the physician and the supervisor's input is needed to provide such material information to the physician. In these circumstances, the supervisor is assisting the injured employee in providing information to the physician so that the injured employee may receive appropriate and responsive medical treatment.

A commenter requested that the final rule "include safety" in this section. However, the intended meaning of this comment is unclear. Regardless, safety is a critical component of § 225.33, along with all of FRA's regulations.

§ 225.37 Optical Media Transfer and Electronic Submission

The final rule updates the title of this section, to reflect changes in technology, to read, "Optical media transfer and electronic submission." In 1994, at the request of many railroads, FRA designed a method for railroads to submit their monthly accident/incident reports to FRA using computer technologies. At the time, high speed Internet access was not available in many locations. Most Internet users used voice grade phone lines to access the Internet. Transferring high volumes of data was difficult and often led to data transmission errors (missing records or errors in characters received in transmission). The other technology used for sending data was a nine-track magnetic tape or 3½ inch "floppy disk." Both the 9-track tape and floppy disk use a magnetic surface to record data. Due to the probability of errors in both data transmission and magnetic media, FRA required a Batch Control Sheet (Form FRA F 6180.99) to verify a complete and accurate receipt of all data.

The current state of computer technology has changed significantly. High-speed Internet access is almost ubiquitous, via cable, DSL, and satellite. Transmission using phone lines and wireless (using cell phone technology) has also improved. Optical media (CD–ROM) is very reliable and the data is "burned" into the disk. Optical media has replaced magnetic media for most data transfer (USB flash drives are not intended for this type of data exchange). In amending the current regulation, FRA has taken into account the current computer technologies by eliminating the requirement for a Batch Control Sheet, and substituted "magnetic media" with "optical media." Further, FRA allows for document transmission using the .jpg and .pdf formats.

The final rule also makes two changes related to Form FRA F 6180.55, "Railroad Injury and Illness Summary." FRA believes that both of these changes will reduce railroad burdens related to completing and submitting this form. The final rule replaces the oath and notarization requirement of Form FRA F 6180.55, "Railroad Injury and Illness Summary," with a requirement that the signature be signed under penalty of perjury in accordance with 28 U.S.C. 1746. Section 20901 of Title 49 of the United States Code requires a railroad to file an Accident/Incident report "under oath" no later than 30 days after the end of each month. To fulfill this requirement, FRA currently requires a railroad reporting officer to make a sworn statement, under oath, before a notary public each month attesting to the accuracy of that month's submission. The question has arisen as to whether an un-sworn, un-notarized statement is adequate to fulfill the

section 20901 oath requirement. In 1976, Congress addressed the use of "unsworn declarations under penalty of perjury," in lieu of a sworn affidavit. Section 1746 of Title 28 of the United States Code, entitled "Unsworn declarations under penalty of perjury," provides that "wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated * * *" and provides examples of the form the declaration, certificate, verification, or statement must take. Consequently, the oath requirement of section 20901 can be met via an unsworn, un-notarized statement, so long as the statement meets the requirements set forth in 28 U.S.C. 1746.

The final rule also updates the regulatory text to include provisions allowing railroads to make their monthly reporting submissions (Form FRA F 6180.54, "Rail Equipment Accident/Incident Report"; Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; and Form FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report") to FRA via optical media (CD–ROM) or electronically via the Internet. Batch control forms (Form FRA F 6180.99) are no longer required for submission. Form FRA F 6180.55 "Railroad Injury and Illness Summary" reports and Form FRA F 6180.81 "Employee Human Factor Attachment" reports may also be submitted through these means. However, the Form FRA F 6180.55 must be submitted as an image of the completed and signed hard copy and must be in a .pdf or .jpg file format only, and the Form FRA F 6180.81 must also be in a .pdf or .jpg file format. If a railroad opts to submit their completed Form FRA F 6180.55 to FRA via optical media or electronically via the Internet, the railroad must maintain the original completed and signed Form FRA F 6180.55 for at least five years after the calendar year to which the report relates, in accordance with § 225.27(c) of this final rule. FRA will provide to the railroad an electronic notice acknowledging the agency's receipt of Form FRA F 6180.55 reports which are filed electronically via the Internet. Railroads must also maintain a hard copy of this acknowledgment notice for at least five years after the calendar year to which the report acknowledged relates, in accordance with § 225.27(c) of this final rule. The final rule also removes the language in paragraph (e), and replaces it with a statement requiring that railroads choosing to use the optical media transfer option, or the electronic submission via Internet option, must use one of the approved formats specified in the FRA Companion Guide. FRA will reject submissions that do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing to provide timely submissions of required reports as required by § 225.11. The previous requirements of paragraph (e) are no longer necessary because they addressed issues relating to magnetic media.

§ 225.41 Suicide Data

In this section, the final rule adds § 225.41 "Suicide Data," to detail FRA's intended use of suicide data. *See* Section-by-Section Analysis for § 225.15, "Accidents/incidents not to be reported" for additional information.[6]

In the NPRM, FRA requested comments and suggestions regarding States' access to records containing "suicide data." FRA is concerned about the public use and dissemination of this data due to its sensitive nature, but also wants States to have access to such information for safety and enforcement purposes. Under the 2003 Final Rule, States could obtain reports directly from railroads pursuant to § 225.1. In addition, State agencies participating in investigative activities under part 212 could obtain records and reports from the railroads and FRA.

The final rule does not amend § 225.1 as it relates to State access; as such, States may still obtain reports directly from a railroad. All of the reports that the States may access contain no Personal Identifying Information (PII) and, therefore, FRA is not concerned about their availability and use. In addition, the final rule does not amend State access pursuant to part 212, as that access is subject to an FRA agreement, *see* § 212.105, and allows States to assist FRA with its safety mission. State agencies participating in investigative activities under part 212 will have access to relevant claims and medical records in addition to Federal records and reports pursuant to § 225.35(b), which do contain PII. State access to these documents is limited to their role in investigative activities and is for the purpose of improving safety; therefore, the final rule does not limit State access pursuant to part 212. Once a State obtains copies of documents pursuant to part 212 or § 225.1, their disclosure and use are governed by the State's privacy laws. Again, FRA wants to limit the distribution and use of the individual records and reports due to the sensitive nature of the information, and has limited the general public's access to the extent reasonably practicable by limiting its availability online through FRA.

Commenters stated that States wanted access to these reports to ensure the accuracy of their own databases and for other safety purposes. FRA believes that the States should have access to the "Suicide data" in addition to the individual reports, pursuant to part 212 and § 225.1, so that they may take steps to understand and prevent suicides occurring on the railroad. As stated above, pursuant to § 225.1, States only have access to certain reports (*e.g.,* Forms FRA F 6180.54, FRA F 6180.57 and FRA F 6180.55a) and do not have access to any records (*e.g.,* Forms FRA F 6180.98 and FRA F 6180.97). Forms FRA F 6180.54, FRA F 6180.57, and FRA F 6180.55a do not contain PII and the FRA Guide contains instructions requiring railroads to not include any PII in the narrative section. As such, FRA is not concerned about allowing the railroads to provide those records to the States pursuant to § 225.1.

As discussed above, State agencies participating in investigative activities under part 212 can obtain records and reports from the railroads and FRA. In this case, State agencies will have access to documents containing PII. Once the State agencies' obtain these documents, their disclosure will be subject to State privacy laws rather than FOIA requests. While FRA wants to limit the general public's access to these documents and their dissemination due to their sensitive nature, FRA believes that States will be able to use this information to improve safety and that FRA has limited the availability of this information to the extent reasonably practicable.

ICC suggested that FRA create a secure Web site so that more information may be made available. At this time, FRA does not plan on creating such a Web site. Instead, FRA is making

[6] The discussion in this section with regard to States access to reports and reports relates only to those records and reports containing suicide data.

all of the relevant information available in the aggregate for the general public.

Appendix A to Part 225—Schedule of Civil Penalties.

Appendix A to part 225 contains a schedule of civil penalties for use in connection with this part. The final rule revises the schedule of civil penalties to reflect revisions made to part 225. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Although the schedules are statements of agency policy, the NPRM provided interested parties with an opportunity to comment. However, no such comments were submitted.

FRA Guide

Generally, FRA makes the following revisions to the FRA Guide: An improved table of contents; clarifying instructions on Forms FRA F 6180.57, 6180.54, and 6180.150 that have fields requesting an U.S. DOT Grade Crossing Identification Number includes and is referencing the U.S. DOT Grade Crossing Inventory Number; an updated e-mail and U.S. postal mail address for the monthly accident/incident reporting submissions; the addition of a subject index; the reorganization of the chapter contents for ease of use; the inclusion of necessary updates; the inclusion of new and revised "Questions and Answers" and "Scenarios" taken from the FRA Safety Data Web page (*http://safetydata.fra.dot.gov/officeofsafety*) and from OSHA's Web page (*http://www.osha.gov/comp-links.html*) to clarify reporting issues; the inclusion of the prior and the current reporting threshold to reflect changes made in part 225; the inclusion of Web addresses for access to the most up-to-date contact information and data contained in the appendices; and the elimination of redundant language by replacing verbatim reiterations of part 225 rule text where appropriate (for ease of reference the FRA Guide includes the full regulatory text of part 225 in a newly created Appendix K).

FRA also makes a technical amendment throughout the FRA Guide by changing the term "Gap" to "Passenger Station Platform Gap" because it best captures the intended meaning. *See* FRA Guide.

More specific changes include:

Chapter 1, "*Overview of Accident/Incident Reporting and Recordkeeping Requirements.*"

FRA revises the paragraph titled, "Telephonic Reports of Certain Accidents/Incidents," in accordance with the amendments set forth in § 225.9, and includes the telephonic reporting requirements set forth in 49 CFR parts 229, "Railroad Locomotive Safety Standards;" part 233, "Signal Systems Reporting Requirements;" part 234, "Grade Crossing Signal System Safety;" and part 219, "Control of Alcohol and Drug Use." Such incorporation is for informational purposes only, and places no new reporting requirements on railroads. By including these requirements in the FRA Guide, FRA hopes to better disseminate its telephonic reporting requirements, and to improve railroad compliance by providing a single reference location for determining when accident/incident telephonic notification is required.

FRA also revises the section entitled "Close of Calendar Year" by clarifying the requirements for submitting late and amended reports, revising the time frame in which FRA will accept additional late and amended accident/incident reports, and changing from optional to mandatory the filing of amended reports for certain accidents/incidents.

FRA publishes final accident/incident counts following the conclusion of a reporting year. Submission of the December report concludes the reporting year. However, railroads are still required to provide to FRA late reports of unreported accidents/incidents and amended reports that correct or update earlier submissions.

Previously, the FRA Guide (Chapter 1—Page 12 through 13) specified three cutoff dates for filing late and amended accident/incident reports following the completion of the reporting year:

(1) April 15 of the next calendar year;

(2) December 1 of the following year: and

(3) Five years after the end of the calendar year to which the accident/incident report relates.

FRA found the reporting scheme to be confusing and outdated with the advent of improved technology. Moreover, improvements in database management strategies allow for contemporaneous viewing of reporting accident/incident statistics and have eliminated the need to impose artificial deadlines for keeping files open or for FRA to publish interim reports. As such, FRA removes references to the cutoff date of April 15th of the next calendar year for accepting late reports and amendments. Accordingly, FRA will receive and process any and all late and amended reports for a period of five years following the calendar year to which an amended or late report relates. This accommodation does not relieve a railroad of its obligation to promptly file a late or amended report upon becoming aware of an omission, mistake or otherwise, in accordance with § 225.13 and the late and amended reporting guidance set forth in the FRA Guide. FRA will continue to publish its Annual Report of Railroad Safety Statistics. Because the accident/incident databases will remain open for updating for a period of five years, the statistics published in the Annual Report will be subject to change. The authoritative source for rail safety statistics will now be the Office of Safety's Web site: *http://safetydata.fra.dot.gov/OfficeofSafety.*

To clarify, these revisions do not change the following late and amended reporting requirements, which are currently set forth in the FRA Guide:

(1) Railroads must file amended reports with FRA through December 1 of the year following the year in which the accident/incident was initially reported.

(2) Railroads must file late reports with FRA for five years (following the end of the calendar year to which the accident/incident relates) for all unreported accident/incidents.

FRA does, however, revise the reporting requirements with respect to certain specified accidents/incidents. Previously, the FRA Guide stated that railroads "should" continue to file amended reports after December 1 of the following year (*i.e.,* for five years after the end of the calendar year to which they relate) for the changes listed below. These revisions make such amended reporting mandatory. Accordingly, railroads shall continue to file amended reports for five years after the end of the calendar year to which they relate for the following changes:

(1) Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a): Change from Injury to Fatality (only if the injured person dies within 180 days from the date of the injury);

(2) Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57): Change from Injury to Fatality, change in Grade Crossing ID, change in the Rail Equipment Involved; and

(3) Rail Equipment Accident/Incident Report (Form FRA F 6180.54): Change from Injury to Fatality, change in Grade Crossing ID, Rail Equipment Involved, Primary Cause Code, Contributing Cause Code, Type of Territory, Number of Cars Releasing or Evacuation.

These revisions further provide that railroads shall continue to file amended reports for five years after the end of the calendar year to which they relate for the additional changes listed below:

(1) Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a): A significant change in the number of reportable days away from work or days restricted; a significant change is at least a 10% variance in the number of actual reportable days away from work or days restricted compared to the number of days already reported.

(2) Railroad Equipment Accident/Incident Report (Form FRA F 6180.54): A significant change in the damage costs for reportable rail equipment accidents/incidents; a significant change is a 10% variance between the damage amount reported to FRA and the current cost figures.

In light of these changes, FRA is revising the timeframe imposed for using the M505 code on the Form FRA F 6180.54. See FRA Guide, Chapter 7.

Chapter 2, ''*Definitions*.''

In the NPRM, FRA added an example to the definition of Worker on Duty-Employee (Class A) characterizing an employee on his lunch break as on duty. In response to the example, AAR submitted comments stating that an employee on an unpaid break should not be considered a Worker on Duty-Employee (Class A) because they are not performing work at that time. AAR stated that there was no justification for this change at this time. FRA removes this example in the final rule to avoid any confusion. In general, an employee on a break, whether paid or unpaid, is considered an Employee Not On Duty (Class B). However, if an employee is performing work-related activities (*i.e.,* lining a switch) during his or her break then the employee is a Worker on Duty-Employee (Class A). Thus, an employer should consider an employee's actual activities during his or her break to determine whether the employee is on or off duty.

FRA adds certain definitions for clarification and ease of reference, and removes definitions that reiterate definitions set forth in § 225.5. FRA adds a definition for ''Temporary Barricaded Crossing'' to mean ''a highway-rail grade crossing that is temporarily closed to highway users by using temporary methods to block highway traffic such as barrels. A temporary barricaded crossing does not constitute a 'closed' crossing.'' FRA also adds a definition for ''Closed Crossing'' to mean a location where a crossing has been physically removed or where rail operations, pathway or highway traffic is not possible (this does not include crossings that are temporarily closed for repairs to the track structure, crossing surface, or roadway approaches). Examples of ''closed crossings'' are locations where the crossing has been permanently barricaded and crossing surface material removed; where the railroad tracks have been cut or barricaded or physically removed; where a connecting turnout has been removed; or where rail operations are not possible because the railroad tracks are paved over, *etc.* Crossings along such inactive railroad lines are closed. FRA adds these definitions to the FRA Guide to eliminate confusion about the meaning of a ''closed'' versus ''barricaded'' crossing, and to revise the definition of ''closed crossing'' to be consistent with the definition used in the Grade Crossing Inventory System (GCIS). The GCIS is a mandatory system used by States, railroads, and the Federal government to profile crossings and determine which crossings need improved warning systems for highway users. FRA and other users regularly compare information from the Highway-Rail Crossing Accident/Incident Reports (Form FRA F 6180.57) to the GCIS. Clearly defining ''closed crossing'' and ''temporary barricaded crossing,'' and making the GCIS and FRA definitions consistent, will reduce confusion and aid in grade crossing accident/incident reporting accuracy.

FRA clarifies in the definition of Highway-Rail Grade Crossing Accident/Incident that all crossing locations within industry and rail yards, ports, and dock areas are considered highway-rail crossings within the meaning of highway-rail grade crossing. This clarifying amendment does not expand the railroads' reporting requirements or create an additional burden as the amendment is consistent with the 2003 FRA Guide, FRA's longstanding policy, and industry practices. The purpose of the amendment is to place the entire definition in one location for ease of reference.

FRA adds a definition for ''Passenger Station Platform Gap'' to mean, ''the horizontal space between the edge of the passenger boarding platform and the edge of the rail car door threshold plate, and the vertical difference from the top of the passenger boarding platform and the top of the rail car threshold.'' This definition, with a minor variation, was recommended by the RSAC General Passenger Safety Task Force to the full RSAC on October 25, 2007, along with the Cause Code Recommendations for platform gap related injuries (see discussion for Appendix F of the FRA Guide). The full RSAC agreed to the recommendations on October 25, 2007. The NPRM proposed adding a definition for ''Gap,'' as opposed to ''Passenger Station Platform Gap.'' A comment to the NPRM suggested that FRA use the phrase ''Platform Gap,'' rather than ''Gap.'' The final rule uses the term ''Passenger Station Platform Gap'' because it best captures the intended meaning. A comment to the NPRM also suggested that the definition itself is too narrow, and not consistent with the common definition of the term. However, as discussed, the definition in the final rule is consistent with the RSAC recommendations, and the definition facilitates the tracking of accidents/incidents that occur on high level platforms.

FRA also adds a definition for ''Passenger Station Platform Gap Incident'' to mean ''an event involving a person who, while involved in the process of boarding or alighting a passenger train at a rail car door threshold plate at a high level passenger boarding platform (*i.e.,* a platform that is 48'' or more above the top of the rail), has one or more body parts enter the area between the car body and the edge of the platform. The following are examples of a Passenger Station Platform Gap Incident:

—While boarding or alighting a passenger train at a high level passenger boarding platform, a person misjudges the passenger station platform gap, resulting in the person's leg entering the passenger station platform gap.

—While boarding or alighting a passenger train at a high level passenger boarding platform, a person is struck by a closing door, resulting in the person's leg entering the passenger station platform gap.

The following are not examples of a Passenger Station Platform Gap Incident:

—While boarding or alighting a passenger train at a high level passenger boarding platform, a person misjudges the gap and falls into the vestibule or platform, without a body part entering the gap.

—While walking on a passenger station at a high level passenger boarding platform, a person slips on the platform, at a location other than the rail car door threshold, resulting in the person's leg entering the gap.

The definition and examples of ''Passenger Station Platform Gap Incident'' were recommended by the RSAC General Passenger Safety Task Force to the full RSAC on October 25, 2007, along with Cause Code Recommendations for platform gap related injuries (*see* discussion for Appendix F of the FRA Guide). The full RSAC agreed to these recommendations on October 25, 2007. The final rule

adopts these recommendations with slight variation.

FRA also revises the definition of "Locomotive" to support changes necessary to include EMU and DMU cars on FRA Form F 6180.54, "Rail-Equipment Accident/Incident Report." In the current FRA Guide (May 1, 2003), a cab car is defined as a locomotive. However, there is no definition for EMU and DMU cars, which created confusion because these cars provide power to the consist and can, therefore, also be classified as locomotives.

FRA adds a definition for "Vehicle" to include automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation, motorized and nonmotorized.

Chapter 3, Form FRA F 6180.55, "*Railroad Injury and Illness Summary.*"

FRA revises the instructions for the use of this form consistent with the changes in this final rule. *See* Section-by-Section Analysis for § 225.27, "Retention of records," § 225.37, "Magnetic media transfer and submission," § 225.15, "Accidents/incidents not to be reported," § 225.41, "Suicide data," and the FRA Guide, Appendix H, "Forms" for additional information.

The final rule also revises the Form FRA F 6180.55 to clarify that by signing the form the reporting officer is attesting that all of the information on the form is true and correct. *See* FRA Guide, Appendix H, "Forms" for additional information.

In addition, FRA is clarifying that casualties due to suicides and attempted suicides, for which an event or exposure arising from the operation of the railroad is a discernable cause and meets the general reporting criteria, shall also be included in Field 18, Reported Casualties, on Forms FRA F 6180.55, "Railroad Injury and Illness Summary." This will allow FRA to verify against the number of forms submitted with the actual count. The railroad should report the person by the "type of person." As such, if a trespasser commits suicide, the railroad shall report it as a trespasser fatality. *See* FRA Guide, Chapter 3.

Chapter 4, Form FRA F 6180.98, "*Railroad Employee Injury and/or Illness Record.*"

FRA revises the instructions for the use of this form consistent with the changes in this final rule. *See* Section-by-Section Analysis for § 225.5, "Definitions" definition for Accountable Injury or Illness; § 225.25, "Recordkeeping," § 225.15, "Accidents/incidents not to be reported;" § 225.41, "Suicide data;" and the FRA Guide, Appendix H, "Forms" for additional information.

FRA is clarifying that railroads must create a Form FRA F 6180.98 for employee casualties due to suicides and attempted suicides, that are accountable or reportable. Moreover, FRA instructs the railroad to indicate in the narrative section that the casualty resulted from the person's suicidal act.

Chapter 5, Form FRA F 6180.97, "*Initial Rail Equipment Accident/Incident Record.*"

FRA revises the instructions for the use of this form consistent with the changes in this final rule. *See* Section-by-Section Analysis for § 225.5, "Definitions;" § 225.25, "Recordkeeping;" § 225.15, "Accidents/incidents not to be reported;" § 225.41, "Suicide data;" and the FRA Guide, Appendix H, "Forms" for additional information.

FRA revised the Questions and Answers in Chapter 4 of the FRA Guide to reflect the changes to the definition of accountable rail equipment accident/incident. FRA removed the Q2/A2 from the FRA Guide as it dealt with the disruption of service criteria from the 2003 Final Rule.

In addition, FRA is clarifying that casualties due to suicides and attempted suicides, for which an event or exposure arising from the operation of the railroad is a discernable cause and that meet the general reporting criteria shall also be included in the Field 30, Casualties, on Forms FRA F 6180.97. Also, FRA is also including instructions that when an accountable or reportable rail equipment accident/incident is caused by a suicide or attempted suicide, the railroad shall indicate that fact in Field 31, Narrative Description.

Chapter 6, Form FRA F 6180.55a, "*Railroad Injury and Illness Summary (Continuation Sheet).*"

FRA revises the instructions for the use of this form consistent with the changes in this final rule. FRA also adds instructions that, if an injury is due to a passenger station platform gap incident, the railroad must use in block 5n ("Cause"), "Probable Reason for Injury/Illness Circumstance Codes," code number 18—Slipped, fell, stumbled due to Passenger Station Platform Gap—regardless of whether other codes may also be applicable. *See* Section-by-Section Analysis for § 225.5, "Definitions;" § 225.15, "Accidents/Incident not to be reported;" § 225.19 "Primary Groups of Accidents/Incidents" and the FRA Guide, Appendix H, "Forms" for additional information.

FRA also revised Chapter 6 to make it consistent with the Notice of Interpretation it published in the **Federal Register** on March 30, 2009, informing interested parties of its application and enforcement of the harassment or intimidation provisions contained in 49 CFR part 225, specifically relating to situations in which a supervisor or other railroad official accompanies an injured employee into an examination room. *See* 74 FR 14091; *see also* Section-by-Section Analysis for § 225.33, "Internal Control Plan."

FRA also revises Chapter 6 to instruct railroads that they must presume that a highway user who is involved in a highway-rail grade crossing accident/incident and is transported from the scene of a highway-rail grade crossing accident/incident to a medical facility via ambulance or other form of medical conveyance did, more likely than not, sustain an FRA reportable injury (*i.e.,* an injury meeting the general reporting criteria set forth at § 225.19(d)(1) through (d)(6)). Absent evidence to rebut the presumption, the railroad must report the injury to FRA on Form FRA F 6180.55a, and include the casualty on Form FRA F 6180.57. If the railroad later discovers that the highway user did not sustain a reportable injury, the railroad must notify FRA in accordance with the late reporting instructions set forth at § 225.13. FRA has found that railroads are under-reporting highway-rail grade crossing accidents/incidents related to injures to persons other than railroad employees due to the railroads' limited access to injured highway users' medical records, especially in light of privacy protections related to health information provided by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191.

FRA emphasizes, however, that this presumption does not relieve railroads of their duty to make reasonable inquiry to determine the nature and severity of highway-rail grade crossing injuries and to accurately report such injuries. In general, FRA has found that some railroads often do not make such reasonable inquiry into potentially reportable injuries of non-employees. Accordingly, the NPRM required a railroad to fulfill its reasonable inquiry responsibilities in determining the nature and severity of highway-rail grade crossing injuries and to accurately report such injuries, by contacting the injured individual or their representative by phone and, if unsuccessful in obtaining the needed

information, in writing. Moreover, the NPRM required that a railroad keep a record of its efforts to make such contact and that this record and documentation of any information obtained be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b).

In light of comments received regarding the burden and effectiveness of contacting potentially injured highway users, the final rule revises the language in the NPRM and requires that the railroad fulfill its inquiry responsibilities by contacting any highway user potentially injured in a highway-rail grade crossing accident/incident, or the highway user's representative(s), in writing and, if unsuccessful in obtaining the needed information, by telephone. If a highway user died as a result of the highway-rail grade crossing accident/incident, a railroad shall not send this form to any person. Moreover, the final rule specifies that the written correspondence should contain the newly created Form FRA F 6180.150, "Highway User Injury Inquiry Form," a cover letter drafted in accordance with the instructions contained in the FRA Guide, and a return envelope that is prepaid and preaddressed. A railroad shall keep a record of its efforts to contact a highway user, and this record and documentation of any information obtained shall be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b).

Form FRA F 6180.150 shall be completed in accordance with the instructions contained in the FRA Guide in Chapter 10, dealing with highway-rail grade crossing accidents/incidents. FRA has found that, when railroads do actually conduct an investigation into injuries to highway users, they will solicit medical records and other documents containing PII. This approach has resulted in a lack of response from individuals who do not want to divulge personal information and are unsure about the purpose of the request. This has resulted in the underreporting or inaccurate reporting of highway-rail grade crossing injuries. While a railroad may request this information, in order to make a reporting decision, a railroad is not required to obtain that type of documentation, although it can provide additional insight into the nature and severity of an injury or illness. As such, Form FRA F 6180.150 is meant to be minimally invasive and requires only that information which a railroad needs in order to determine whether the person suffered a reportable injury. This requirement does not prevent a railroad from conducting additional investigation, but is meant to ensure that the railroad performs an investigation into the nature and severity of highway-rail grade crossing injuries, in a less invasive manner. However, a railroad shall not require a highway user to present medical documentation or other supportive information in order to report the casualty.

A railroad shall complete Part I of Form FRA F 6180.150 with information regarding the highway-rail grade crossing accident/incident, in accordance with the instructions provided in FRA Guide. The railroad shall hand deliver or send by first class mail the letter within a reasonable time period following the date of the highway-rail grade crossing accident/incident. The letter shall also contain a prepaid, pre-addressed return envelope, and a copy of the Form FRA F 6180.150 with Part I completed, along with the required cover letter. Highway users are not required to complete Form FRA F 6180.150. Consequently, FRA acknowledges that there will be situations in which a highway user cannot be reached even though a railroad contacts the person in writing and by telephone. Other times, a highway user will refuse to provide any information even though a railroad clearly explains the Federal reporting requirements and the reason for soliciting information. In those cases, a railroad is still responsible for deciding whether, considering all of the circumstances, the highway user suffered a reportable injury (or, whether the presumption discussed above, applies). The railroad must reconsider that determination if new or additional information is later acquired. Moreover, if a highway user completes Part II, or provides additional information during a telephone call, the railroad will be responsible for determining whether, based on the circumstances, the person suffered a reportable injury or illness and for using that information in complying with FRA reporting and recording requirements.

The final rule adds a draft of Form FRA F 6180.150, "Highway User Injury Inquiry Form," to Appendix H and a sample cover letter in Appendix N. *See* FRA Guide. The instructions added to the final rule for completing Form FRA F 6180.150 require the railroad to complete Part I of the form. *See* FRA Guide, Chapter 10. Form FRA F 6180.150 was submitted to OMB for approval with the final rule and is still pending OMB approval; therefore, the railroads cannot use the form until it has been approved. FRA expects that, prior to the delayed six month effective date, the form with be approved. Following approval, the final form will be available at *http://safetydata.fra.dot.gov/officeofsafety.*

The cover letter that accompanies Form FRA F 6180.150 shall be drafted in accordance with the instructions contained in the FRA Guide, Chapter 10. FRA has included a sample cover letter in the FRA Guide for use by the railroads. *See* FRA Guide, Appendix N. Specifically, the cover letter shall clearly explain the Federal reporting requirements imposed on the railroads, address only Federal reporting requirements and not the railroad's claims process, explain that the form is voluntary, and provide clear instructions on how to complete the form. The cover letter may ask the highway user to provide additional information, but the cover letter shall not mandate that the individual provide certain information in order for a railroad to comply with Federal reporting requirements. *See* FRA Guide, Chapter 10 for a complete list of instructions.

With regard to the cover letter, the instructions contained in the final rule require that the letter contain the following:

- An explanation of why the railroad is contacting the highway user;
- An explanation of part 225's accident/incident reporting requirements;
- An explanation of how the form and any response will be used for part 225's accident/incident reporting requirements;
- An explanation that the highway user is not required to respond and that a response is voluntary;
- An opportunity to correct incorrect information in Part I;
- Identify and provide contact information for a person at the railroad who can answer questions with regard to the form;
- Provide instructions on how to complete Part II; and,
- An explanation of how any medical records, if requested, personal identifying information or information will be handled.

The cover letter and Form FRA F 6180.150 are meant to be tools that allow the railroad to gather information and comply with part 225's accident/incident reporting and recording requirements. As such, a railroad shall not require the highway user to provide any medical or personal information in order to report a casualty. Moreover, the cover letter and any communication for the purposes of part 225 shall remain

separate from and not reference the railroad's claims process in order to avoid confusion.

As an initial matter, FRA received comments regarding the language proposed in the NPRM; however, as the language in the final rule simply elaborates on and provides additional directions on how to conduct an inquiry into a potentially reportable injury, a majority of the comments are still relevant.

Commenters suggested that the requirements proposed in the NPRM were overly burdensome and would not be effective as individuals generally do not want to share personal information. As the requirements contained in the final rule are consistent with those proposed in the NPRM, the comments are still applicable. FRA is concerned that these injuries and fatalities are not being reported or investigated; as such, the changes are meant to ensure that both of these things occur. Moreover, the presumption of reportablity created in the final rule is meant to simplify the process. Also, a railroad is allowed to terminate its investigation after calling and mailing the individual as required by this final rule. The inquiry requirement does not impose a timeframe on the follow-up the railroad is required to perform, except that the railroad must initiate its investigation within a reasonable time after the date of the highway-rail grade crossing accident. FRA created the Form FRA F 6180.150 and the sample cover letter in an effort to open the communication process with potentially injured highway users to ensure that railroads and FRA are gathering accurate information. Finally, the final rule requires the railroads to contact the highway user by mail prior to contacting the person by phone because FRA believes that this will be a less intimidating approach.

In addition, UP stated in its comments that the additional requirements would force them to intrude on the private lives of the general public and could increase issues with pending litigation. As an initial matter, private litigation matters should not prevent the railroads from reporting information about casualties and investigating the potential causes of accidents/incidents arising out of the operation of the railroad. Also, the railroads should already be investigating these casualties. FRA's creation of the presumption is meant to alleviate some burden upon the railroad where they follow-up but cannot eventually obtain the necessary information. While the new requirement does mandate that a railroad follow-up with injured persons, a railroad is simply required to send a letter to and possibly call the highway user in an effort to obtain information in order to complete a Federal form. As explained above, the Form FRA F 6180.150 and the cover letter, explaining the purpose of the railroad's inquiry, is meant to encourage the sharing of information and to be less intimidating.

Commenters also suggested that this requirement would not improve safety. FRA uses information about reportable injuries to understand the severity of accidents and incidents occurring due to the operation of the railroad. When the railroads fail to report injuries and illnesses, this prevents FRA from fully understanding the impact and severity of such accidents and incidents.

Amtrak submitted comments stating that, due to their large number of passengers, the burden of these additional requirements will be extreme. As an initial matter, the duty to investigate highway-rail grade crossing incidents and trespasser fatalities, which are discussed below, do not generally apply to passengers (or individuals legally on railroad property). While railroads are required to conduct a reasonable inquiry into any potentially reportable injury or illness, FRA is particularly concerned with, and the additional requirements apply to, only highway users potentially injured in a highway-rail grade crossing accident/incident and trespasser fatalities. *See* FRA Guide.

Next, FRA is also concerned that suicides are being reported as trespasser fatalities. Often this occurs because railroads do not always make reasonable inquiry in their efforts to determine the cause of death. In fact, FRA has found that a number of reported trespasser fatalities are actually suicides. Accordingly, FRA revised Chapter 6 to clarify that, in order to fulfill its responsibilities in determining the nature of a trespasser fatality and to accurately report such a fatality, a railroad must try to obtain documentation indicating the cause of death by contacting the coroner, public police officer, or other public authority by telephone and, if unsuccessful, in writing. The railroad must continue its efforts to obtain this documentation for a period of six months following the month in which the fatality occurred. The railroad must keep a record of its efforts to obtain such documentation. This record and any documentation obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b).

Commenters further suggested that there are already sufficient steps in place requiring the railroads to fully investigate fatalities and to obtain relevant information. As stated above, FRA has found that the railroads often report fatalities as trespasser fatalities when they are in fact suicides. To understand and prevent deaths arising from the operation of the railroad and suicides occurring on the railroad, FRA needs to have accurate and complete information. As such, FRA believes that the additional requirements are necessary. *See* Section-by-Section Analysis for § 225.41, "Suicide data" for additional discussion of the comments and requirements.

Other comments suggested that the six-month follow-up requirement is too burdensome. FRA has found that it often takes time for public authorities to complete their investigations and declare a cause of death. Therefore, FRA believes that the six-month requirement will provide the railroads with sufficient time to obtain this information. One railroad suggested that the railroads should only have to follow-up with one document request within an initial three-month period from the date of the incident. Again, FRA has found that it often takes more time to obtain this information and that follow-up by different means is more effective. In addition, once a railroad has obtained confirmation of the cause of death, they may terminate their investigation.

Several commenters suggested that the railroads do not have the legal authority to obtain the required documentation. As stated above, the railroads have historically been able to obtain this information. If a railroad cannot obtain this information and properly documents its efforts, then the railroad has fulfilled its obligations under part 225. However, if a railroad cannot confirm cause of death, the railroad will still be responsible for reporting the casualty as a trespasser fatality. Finally, FRA believes that allowing the railroads to accept verbal confirmation of the cause of death, which they must document, will ease any potential burden. *See* the Section-by-Section Analysis for § 225.15, "Accidents/incidents not to be reported."

In addition, FRA revises the FRA Guide to clarify who can declare a casualty as an attempted suicide or suicide. As discussed above, the final rule revises the definition of "Suicide data" to mean "data regarding the death of an individual due to the individual's commission of suicide as determined by a coroner, public police officer or other public authority; or injury to an individual due to that individual's

attempted commission of suicide as determined by a public police officer or public authority." The FRA Guide explains that a "public authority" is a Federal, State or local government entity, such as a public health department, that has the legal authority to declare a fatality a suicide or an injury to a person an attempted suicide.

Lastly, FRA revises Chapter 6 to instruct railroads that they must complete the longitude and latitude fields in blocks 5s and 5t on the Form FRA F 6180.55a for any reportable casualty to a trespasser. This requirement may be satisfied by either using global positioning system (GPS) equipment to determine the actual longitude and latitude, or by using a free online technology to determine an estimated longitude and latitude. *See* FRA Guide for additional information.

Chapter 7, Form FRA F 6180.54, "*Rail Equipment Accident/Incident Report.*"

FRA revises the instructions for the use of this form consistent with the changes in this final rule. FRA also adds instructions to Chapter 7 requiring that, if an accident is caused by a bond wire attachment issue (*see* Appendix C "Train Accident Cause Codes"), information on the methods and locations of those attachments be provided in the narrative block 52. *See* Section-by-Section Analysis for §§ 225.5, 225.15, 225.19 and Revisions to the FRA Guide, Appendix H.

FRA also revises Chapter 7 to instruct railroads that they must complete the longitude and latitude in blocks 50 and 51. This requirement may be satisfied by either using GPS equipment to determine the actual longitude and latitude or by using a free online technology to determine an estimated longitude and latitude. *See* FRA Guide for additional information.

The ICC's comments suggested adding additional fields on the Form FRA F 6180.54. FRA did not adopt these recommendations at this time, as the information is captured elsewhere or can be easily obtained at a later time. ICC suggested a field requesting whether the train was equipped with a digital or other recording device and whether the information was retrieved. FRA believes that this field is unnecessary as the train number provides sufficient information, and this information can be obtained at a later time. In addition, ICC recommended requesting whether the grade crossing had a recording device and whether the information was retrieved. FRA believes that sufficient information is already being captured on Forms FRA F 6180.54 and FRA F 6180.57, in addition to the U.S. DOT Grade Crossing Inventory. ICC also suggested including a field asking whether the train movement was recorded and whether that information was retrieved. Again, this additional field is not necessary as PTC becomes mandatory. In addition, ICC wanted a field asking whether the train movement was recorded by GPS and was the information reported by a wireless device. Again, FRA believes that this information can easily be obtained at a later time and does not believe an additional field is necessary. In addition, this change may be done at a later time.

The final rule revises the requirements for the Primary Cause Code with regard to cause code M505 and the railroads' responsibility to update this code. The final rule eliminates the April 15 deadline as it no longer serves a purpose with the updated technology and to be consistent with the changes made in FRA Guide at Chapter 1. *See* FRA Guide, Chapter 1. Consequently, the railroad will be required to submit an amended report pursuant to § 225.13 once it has closed its investigation and determined the cause of the accident/incident. This duty is consistent as the railroad's responsibility under the 2003 FRA Guide, as railroads were previously required to submit an amended report once it determined the cause of accident/incident.

The final rule also adds clarifying instructions on Form FRA F 6180.54, which provide that fields requesting a U.S. DOT Grade Crossing Identification Number are referring to the U.S. DOT Grade Crossing Inventory Number.

Chapter 10—Form FRA F 6180.57— "*Highway-Rail Grade Crossing Accident/Incident Report.*"

As an initial matter, the final rule revises the title of Chapter 10 to Forms FRA F 6180.57—Highway-Rail Grade Crossing Accident/Incident Report & FRA F 6180.150—Highway User Injury Inquiry Form. This change was made in light of the newly created Form FRA F 6180.150 and the instructions which are contained in FRA Guide at Chapter 10.

The final rule revises the instructions for the use of this form consistent with the changes in this final rule. *See* Section-by-Section Analysis for § 225.15, "Accidents/Incident not to be reported" and the FRA Guide, Appendix H, "Forms" for additional information.

The final rule revises Chapter 10 to instruct railroads that they shall presume that a highway user who is involved in a highway-rail grade crossing accident/incident and is transported from the scene of a highway-rail grade crossing accident/incident to a medical facility via ambulance or other form of medical conveyance, did, more likely than not, sustain an FRA reportable injury (*i.e.,* an injury meeting the general reporting criteria set forth at § 225.19(d)(1) through (d)(6)). Absent evidence to rebut this presumption, the railroad must report the injury to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" and must include the casualty on Form FRA F 6180.57. This presumption does relieve the railroad of its responsibility to an inquiry into the nature and severity of the highway user's injuries.

In order to fulfill its responsibilities in determining the nature and severity of a highway-rail grade crossing injury and to accurately report such injury, a railroad must try to contact potentially injured highway users involved in a highway-rail grade crossing accident/incident, or their representatives, in writing and, if unsuccessful, obtain the needed information, by telephone. There is no requirement to contact a representative of a highway user who has died as a result of the accident. The written communication must include a Form FRA F 6180.150, cover letter and prepaid/preaddressed return envelope. Form FRA F 6180.150 and the cover letter must be completed, drafted and sent in compliance with the instructions contained in § 225.21 and FRA Guide at Chapter 10. A highway user is not required to respond to a railroad's written or verbal requests for additional information with regard to potential injuries. However, railroads are required to use any response in complying with part 225's accident/incident reporting and recording requirements. See FRA Guide, Chapter 6 of this Final Rule for a complete discussion of the requirements and relevant comments.

Form FRA F 6180.150 was submitted to OMB for approval with the final rule and is still pending OMB approval; therefore, the railroads cannot use the form until it has been approved. FRA expects that prior to the delayed six-month effective date, the form will be approved. Following approval, the final form will be available at *http://safetydata.fra.dot.gov/officeofsafety.*

The railroad must keep a record of its efforts to make such contact including, but not limited to, retaining a copy of the dated Form FRA F 6180.150 that was sent to the highway user and the accompanying cover letter, documenting the date, time and content of the follow-up call, and retaining any response from the highway user. This record and documentation of any information obtained must be available

for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b). For additional information see Section-by-Section Analysis for § 225.15 and the FRA Guide, Subsection F, Form FRA F 6180.55a.

A comment to the NPRM suggested that block 41 on Form FRA F 6180.57 be expanded from "Driver" to "Highway User." As discussed below, the final rule does make this change. Another comment to the NPRM suggests that block 44 on Form FRA F 6180.57 be changed from "Driver" to "Highway User" so as to include non-motorist accidents. The final rule does not adopt this suggestion because this information is captured in block 46. In addition, additional instruction is included in the FRA Guide to clarify that block 44 only concerns motor vehicle operators.

The final rule adds instructions pertaining to the narrative section on Form FRA F 6180.57 stating "Do not record personal identifiers, e.g., names, Social Security Numbers, payroll identification." This change is consistent with the instructions for Forms FRA F 6180.55a and FRA F 6180.54.

The final rule also adds clarifying instructions on Form FRA F 6180.57 the field requesting an U.S. DOT Grade Crossing Identification Number means and is referencing to the U.S. DOT Grade Crossing Inventory Number.

Chapter 13, pertaining to Form FRA F 6180.107, "*Alternative Record for Illness Claimed to be Work-Related.*"

FRA revised the instructions for the use of the form consistent with the changes adopted in the final rule. *See* Section-by-Section Analysis for § 225.21, "Forms," § 225.25, "Recordkeeping," § 225.27, "Record Retention," § 225.33, "Internal Control Plan" and the FRA Guide, Appendix H, "Forms" for additional information.

The final rule revises Q1 in the Question and Answer box as the form no longer has a data element for an employee's social security number. Rather, employee social security number has been replaced with a field requesting the employee's identification number. This clarifying amendment is meant to make the Q1 accurate and consistent with the changes to the form.

Appendix A, "*Railroad Codes.*"

The FRA Guide updates the railroad codes. In addition, the final rule adds a web address where there is an up-to-date list of railroad codes.

Appendix B, "*State Codes.*"

The FRA Guide updates the State codes by adding the abbreviation for Hawaii. This is a correction of an inadvertent admission and is consistent with the change to Form FRA F 6180.56.

Appendix C, "*Train Accident Cause Codes.*"

The FRA Guide revises the following Train Accident Cause Codes:

- T224 "Rail defect originating from bond wire attachment." FRA added Train Accident Cause Code T224 in response to the National Transportation Safety Board's (NTSB) 2005 recommendation that FRA provide a train accident cause code for derailments caused by bond wire attachments. This recommendation arose from the NTSB's investigation of the derailment of northbound National Railroad Passenger Corporation (Amtrak) train No. 58 while operating on Canadian National (CN) track near Flora, Mississippi, on April 6, 2004. The derailment resulted in one fatality, 35 injuries (that were reportable to FRA), and damage costs of approximately $7 million. The NTSB recommended that FRA include in the FRA Guide a train accident cause code for derailments caused by rail cracks originating from bond wire attachments, and that information on the methods and locations of those attachments be provided in the narrative section of the accident/incident report (NTSB Recommendation Number RAR–05/02);
- S104 "Radio controlled switch not locked effectively." FRA amends Train Accident Cause Code S104 by adding "(equipment failure)" to the code's description. The description of Cause Code S104 as amended reads, "Radio controlled switch not locked effectively (equipment failure)." FRA incorporated this change in order to clarify that S104 pertains to equipment failure, not human error.
- H707 "Radio controlled switch not locked effectively." FRA amends Train Accident Cause Code H707 by adding "(human error)" to the code's description. The description for Cause Code H707 denotes "Radio controlled switch not locked effectively (human error)." FRA incorporated this change in order to clarify that H707 pertains to human error, not equipment failure.
- M 309 "Grade Crossing Suicide"; M310 "Grade Crossing Attempted Suicide"; M509 "Suicide Resulting in Train Accident"; and M510 "Attempted Suicide Resulting in Train Accident" for use in block 38 of Form FRA F 6180.54, "Rail Equipment Accident/Incident Report." *See* Section-by-Section Analysis for § 225.15, "Accidents/incidents not to be reported" and the FRA Guide, Appendix H, "Forms" for additional information.

Appendix F, "*Circumstance Codes.*"

FRA adds the following "Probable Reason for Injury/Illness Circumstance Codes," (Probable Reason Circumstance Code) under the subtitle "Remotely controlled locomotive(s) environment" to the Remote Control Locomotive Switching Operations Fatality Analysis Codes (RCL SOFA Codes) to the May 1, 2003, guide as amended:

- R1 Object fouling track, related to using RCL
- R2 Outside caused (*e.g.,* assaulted/attacked), related to using RCL
- R3 Lack of communication, related to using RCL
- R4 Slack adjustment during switching operation, related to using RCL
- R5 Insufficient training, related to using RCL
- R6 Failure to provide adequate space between equipment during switching operation, related to using RCL
- R7 Close or no clearance, related to using RCL
- R8 Act of God, related to using RCL
- U1 Object fouling track, unrelated to using RCL
- U2 Outside caused (*e.g.,* assaulted/attacked), unrelated to using RCL
- U3 Lack of communication, unrelated to using RCL
- U4 Slack adjustment during switching operation, unrelated to using RCL
- U5 Insufficient training, unrelated to using RCL
- U6 Failure to provide adequate space between equipment during switching operations unrelated to using RCL
- U7 Close or no clearance, unrelated to using RCL
- U8 Act of God, unrelated to using RCL

In the final regulation to 49 CFR part 225, 68 FR 10107, March 3, 2003, new codes and form changes were made to accommodate the recording events when remote control locomotive operations (RCL) were involved.

A special task group of railroad safety officers representing labor and industry and FRA members was created in the RSAC Accident/Incident Working Group to discuss the coding of RCL. The results of the special task group would be presented to the entire working group for approval. The concern of the reporting officers was to prevent any major changes to the then current forms or databases. In part, this rested on their

information technology offices' internal charges for making major programming changes. The FRA team was tasked with finding a way to include RCL involved accidents and incidents on the following three forms: Form FRA F 6180.54, "Rail Equipment Accident/ Incident Report"; Form FRA F 6180.57, "Highway-Rail Crossing Accident/ Incident Report"; and Form FRA F 6180.55a, "Railroad Injury/Illness Summary (Continuation Sheet)," without changing the database structures.

FRA found a way to capture RCL-related incidents on both the Form FRA F 6180.54, "Rail Equipment Accident/ Incident Report," and Form FRA F 6180.57, "Highway-Rail Crossing Accident/Incident Report" without expanding the database or making a major change on the form or the respective database. Capturing this information on Form FRA F 6180.55a, "Railroad Injury and Illness (Continuation Sheet)," remained problematic due to the small number of data fields and limited amount of data collected for each reportable event. FRA developed a solution by expanding the number of Probable Causes in the Circumstance Codes. The method chosen by FRA, and accepted by the RSAC Working Group, was to take each code for Probable Reason Circumstance Codes and create two additional codes, one for RCL-related to the event and another for RCL involved but unrelated to the event. Therefore, the probable reason of "Equipment," code 04 had two additional codes: "Equipment, related to using RCL," code 24, and "Equipment, unrelated to using RCL," code 44. This technique, although clumsy, satisfied railroad safety reporting officers, rail labor officials, and FRA.

Codes 21 through 59 in Probable Reason for the "Remotely Controlled Locomotive(s) Environment" was approved by the full RSAC Working Group for Accident/Incident Reporting. At a later RSAC Working Group Meeting in New Orleans, LA, a new discussion started about the Probable Reason Circumstance Codes. This discussion centered on Switching Operations Fatality Analysis (SOFA). SOFA events were claiming 40 to 50 percent of all fatalities of railroad workers. The Working Group decided to include new codes to insure that fatal and non-fatal SOFA events were culled from other injuries. A small task group was formed, and worked one evening to develop the eight new codes. The full Working Group approved these SOFA codes the next day. However, there was an oversight by the Working Group in the process. There should have been two additional sets of codes for SOFA RCL events (related to RCL and unrelated to RCL). This oversight was not discovered until October 2003, well after the publication and effective date of the revised regulation.

All of the parties to the Full Working Group agreed that any omission in capturing SOFA related injuries was a serious problem. FRA developed 16 additional codes to correspond to the previous eight codes. The new codes R1 through R8 and U1 through U8 were promulgated in December 2003, and were subsequently added to the FRA Guide to remedy the immediate concern. While the initial publication of these SOFA codes was not subject to a notice and comment period, FRA invited comments on the addition of these SOFA codes but did not receive any comments on this change.

FRA is also adding new Circumstance Codes to Appendix F of the FRA Guide for use on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)," to better identify injuries that occur in or due to passenger station platform gap. FRA believes that the collection of this information will allow the agency to assess the magnitude of these types of injuries, identify locations where passenger station platform gap related injuries frequently occur, and ultimately aid FRA in efforts to reduce such injuries.

The RSAC General Passenger Safety Task Force reported to the full RSAC on October 25, 2007, its Cause Code Recommendations for passenger station platform gap related injuries as follows:

(1) To the "Physical Act Circumstance Codes" add codes for:

- Passenger Train-Boarding; and
- Passenger Train-Alighting.

Also revise the "Physical Act Circumstance Codes" to clarify that codes 63 (stepping up) and 64 (stepping over) are to be used for boarding/ alighting at high level platforms.

(2) To Part III of the "Location Circumstance Codes" add codes for:

- Rail Car Door Threshold Plate to Edge of Passenger Station Platform Gap;
- Area Between Coupled Cars and Platform;
- Area Along Car body, other than Threshold Plate and Platform Edge;
- Car in Vestibule; and
- On Platform—Other.

Also change Location Circumstance Code C2—"On Platform" to "On Platform Station."

(3) To the "Event Circumstance Codes" add a code for:

- Slipped, fell, stumbled due to Passenger Station Platform Gap.

(4) To Part I of the "Location Circumstance Codes" add a code for:

- Other than Platform.

Also change the Location Circumstance Code "P—Passenger Terminal" to "P—Passenger Station on Platform".

(5) To the "Tools, Machinery, Appliances, Structures, Surfaces, (*etc.*) Circumstance Codes" add codes for:

- Door, End or Side—Passenger Train; and
- Door, Trap.

The full RSAC agreed to these recommendations on October 25, 2007.

Subsequently, FRA's Safety Knowledge Management Division's database experts reviewed the RSAC approved coding scheme in an effort to prevent redundant codes, develop ease in coding for reporting officers and clerks not familiar with all the nuances in gap incidents, and to develop a system to easily cull passenger station platform gap incidents from the casualty database. Based on this review, FRA is adding the following new codes to Appendix F—Circumstance Codes as follows:

(1) To the "Physical Act Circumstance Codes" FRA proposes to add code:

- 80—Stepping across (passenger cars).

(2) To Part III of the "Location Circumstance Codes" FRA proposes to add codes:

- G1—Rail Car Door Threshold Plate to Edge of Platform—Gap;
- G2—Area Between Coupled Cars and Platform;
- G3—Area Along Car body, other than Threshold Plate and Platform Edge; and
- G4—Car in Vestibule.

(3) To the "Probable Reason for Injury/ Illness Circumstance Codes" FRA proposes to add code:

- 18—Slipped, fell, stumbled due to Passenger Station Platform Gap.

(4) To the "Tools, Machinery, Appliances, Structures, Surfaces, (*etc.*) Circumstance Codes" FRA proposes to add codes:

- 1G—Door, End or Side—Passenger Train; and
- 2G—Door, Trap—Passenger Train.

The instructions for coding passenger station platform gap incidents are included in the FRA Guide.

Appendix G, "*FRA Regional Offices and Headquarters.*"

The FRA Guide updates these entries and includes the web address where the most current contact information can be obtained.

Appendix H, "*Forms.*"

FRA is revising its forms, as follows:

(1) *Form FRA F 6180.97 and Form FRA F 6180.98.* FRA is revising block 36 on Form FRA F 6180.97 "Date" to state "Date Initially Signed/Completed"; and block 44 on Form FRA F 6180.98 "Date" to state "Date Initially Signed/Completed" to clarify that the block must contain the initial date the form was completed. FRA finds it necessary to make such change because certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. Consequently, FRA is unable to discern if the railroad entered each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by § 225.25 (a)–(e), no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required by § 225.25(f). FRA believes that specifying the date which is required to be maintained on the record will resolve any confusion regarding the requirement.

(2) *Form FRA F 6180.97.* FRA is renaming block 12, "Division" to "Subdivision" and requiring railroads to provide train accident location by providing subdivision data in this block as a means of improving railroad safety in the area of train accidents. If the railroad is not so divided, enter the word "system." If subdivision data is not applicable, the railroad must enter terminal/yard name. This change also applies to alternative railroad-designed Form FRA 6180.97. This change is consistent with the "Division" to "Subdivision" change on Form FRA F 6180.54. *See* paragraph N(6) of this appendix, "Form FRA F 6180.54" for additional information.

FRA is also clarifying that, in situations of joint operations, block 26, "Equipment Damage (in dollars)", refers to the aggregate amount of equipment damage incurred for all railroads involved, and that Block 27, "Track, Signal, Way & Structure Damage (in dollars)" refers to the aggregate amount of track, signal, way and structure damage incurred for all track owners. This revision does not change existing reporting requirements, and does not represent an additional reporting burden, because both railroads should already be exchanging relevant cost data to determine if the accident was FRA reportable.

(3) *Form FRA F 6180.98.* FRA is replacing the "Social Security Number" requirement in block 6 with a requirement for "Employee Identification Number." FRA is making this change in response to privacy concerns. This chapter will include instructions addressing FRA's requirement that (by amending the definition for "Accountable Injury or Illness") railroads complete a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" for any abnormal condition or disorder of a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional regardless of whether or not it meets the general reporting criteria listed in § 225.19(d)(1) through (6), and that the railroad employee claims that, or the railroad otherwise has knowledge that, an event or exposure arising from the operation of the railroad is a discernable cause of the abnormal condition or disorder.

(4) *Form FRA F 6180.55.* FRA has eliminated the notary requirement on Form FRA F 6180.55 block 10, and replaced it with a requirement that the report be signed under penalty of perjury. The NPRM proposed that the signature read, as follows:

(1) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)."

(2) If executed without (*i.e.,* outside of) the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)."

To make clear the signee is attesting to the accuracy of all of the information on the form, the final rule revised the language, as follows:

(1) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the information on this form is true and correct. Executed on (date).

(Signature)."

(2) If executed without (*i.e.,* outside of) the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information on this form is true and correct. Executed on (date).

(Signature)."

FRA is able to replace the oath requirement, mandated by 49 U.S.C. 20901, with a signature under penalty of perjury under 28 U.S.C. 1746. *See* Section-by-Section Analysis for § 225.37, "Magnetic media transfer and electronic submission," for additional information.

(5) *Form FRA F 6180.55a.* FRA requires railroads to place an "X" representative of "suicide" or "attempted suicide" in block 5r when reporting a suicide or attempted suicide. FRA also adds instructions that, if an injury is due to a passenger station platform gap incident, the railroad must use in block 5n ("Cause"), "Probable Reason for Injury/Illness Circumstance Codes" code number 18—Slipped, fell, stumbled due to Passenger Station Platform Gap, regardless of whether other codes may also be applicable. *See* Section-by-Section analysis for § 225.15, "Accidents/incidents not to be reported," for additional information. FRA also changes the title of block 5m from "Result" to "Tools" to remain consistent with the wording in Appendix F.

In addition, in the NPRM, FRA requested comments and suggestions on whether FRA should require railroads to complete the longitude and latitude blocks on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" (blocks 5s and 5t) for reportable trespasser casualties, and on Form FRA F 6180.54, "Rail Equipment Accident/Incident Report" (blocks 50 and 51). Currently, completion of longitude and latitude data on both of these forms is optional.

Because railroads do not report longitude and latitude to FRA, FRA cannot currently geo-locate reportable trespasser casualties. In addition, although FRA can geo-locate reportable accidents/incidents based on the information available in the Form FRA F 6180.54, it is time consuming. The final rule provides FRA with the ability to determine the precise location of accidents and trespasser injuries. For example, FRA will be able to determine the exact location of releases of hazardous materials or leakages of diesel fuel. Having the location information for all train accidents will allow FRA to develop better inspection planning, identify locations of hazardous materials contamination affecting the health and/or environment, and provide to the Transportation Security Administration another tool for security planning. Traditionally, FRA and the railroad industry have relied on the railroad milepost system to reference location, and, in many cases, such location data is accurate for short-term issues. However, the railroad milepost system is not reliable. Over the long-term, railroads change mileposts during mergers and reorganizations. Also, mileposts can be inaccurate when a railroad is able to build a shorter link, or when a railroad does not remove old mileposts when replacement mileposts,

which have a different starting location, are installed.

Several commenters generally supported the collection of this type of information. One commenter, while not opposed to the collection of such data, was concerned about the resulting costs and indicated that the requirement should be phased-in so railroads had time to acquire the technology to comply with the regulation. This commenter also indicated that FRA should consider providing funding for GPS equipment, and that longitude and latitude should only be required for certain types of incidents. Commenters who were opposed to the mandatory inclusion of longitude and latitude generally argued that the cost to obtain GPS technology was too costly, that the technology was unreliable, that the industry was not ready for such a change, and that the regulation would not improve data collection or railroad safety.

After considering the comments received, this final rule requires the mandatory completion of the longitude and latitude blocks on Form FRA F 6180.55a (blocks 5s and 5t) for any reportable casualty to a trespasser, and on Form FRA F 6180.54 (blocks 50 and 51). In order to defray potential costs, the longitude and latitude coordinates may be either actual or estimated. Obtaining actual coordinates requires GPS technology in the field, but obtaining estimated coordinates only requires internet access. For example, this requirement may be satisfied by providing either: The actual longitude and latitude, as determined at the time of the accident/incident, or injury using GPS technology; or an estimated longitude and latitude, as determined by using a Web site, such as Google maps or the FRA's free Web site (*http://fragis.frasafety.net/GISFRASafety/default.aspx*). Moreover, as discussed previously, the final rule is effective Wednesday, June 1, 2011. As such, railroads do have a significant period of time to come into compliance. Regardless, the latitude/longitude requirement has been an optional field on both forms, and while it will be mandatory on the Form FRA F 6180.54 for all reportable rail equipment accidents/incidents, with respect to the FRA Form F 6180.55a, it will only be a requirement for reportable casualties to trespassers.

FRA believes that the majority of railroads already have the capability to determine actual longitude and latitude for such events on-site. Moreover, within the next six years, about one half of the general rail system will be equipped with Positive Train Control ("PTC").[7] While such PTC systems will vary widely in complexity and sophistication, such systems will provide railroads with longitude and latitude coordinates for specific track locations. For those railroads that do not currently have the equipment necessary to obtain longitude and latitude coordinates, the final rule permits the use of estimated coordinates which can be freely obtained on the internet. For example, railroads may estimate longitude and latitude via publicly accessible Web sites at no charge (*e.g., http://www.gorissen.info/Pierre/maps/googleMapLocation.php* or *http://itouchmap.com/latlong.html*).

A comment to the NPRM stated that this revision may create a duty for railroads towards trespassers that somehow impacts States' rights. This revision does not create any such duty, and railroads are already required to collect information on trespassers—this revision simply adds a level of detail to increase the value of the information. *See* Section-by-Section Analysis § 225.41, "Suicide data," for additional information. A comment suggested that longitude/latitude should be collected and stored in decimal degrees. The final rule does not adopt this suggestion because the FRA Guide provides recording instructions that are sufficient for FRA's needs. A comment suggested that additional fields be added for the city name, station name, railroad division, and milepost to help determine where the incident occurred. The final rule does not adopt this suggestion because such information is not necessary as the longitude/latitude will be captured. A comment suggested that additional fields be added for weather, visibility, gender, and railroad yard name. The final rule does not adopt these suggestions because they are outside of the scope of this rulemaking, and weather and visibility information are currently captured by the Form FRA F 6180.54. Comments stated that some GPS equipment would not get reception in all areas, and that GPS is unreliable because satellite networks can fail. However, FRA believes that, in general, GPS does get reception in most areas and that satellites generally do not have failures. Regardless, railroads may use free online technology to provide estimated longitude/latitude in the event that there is no GPS reception. A comment stated that GPS will not provide any additional information that is not otherwise available, and thus would not improve safety. As stated, FRA does not currently obtain sufficient information to geo-locate trespassers. In addition, although FRA can geo-locate reportable accidents/incidents based on information available in the Form FRA F 6180.54, it is time consuming, and thus the requirement of longitude/latitude on that form streamlines the data collection process. Furthermore, longitude/latitude information enables FRA to obtain specific location information in order to pinpoint areas of concern.

(6) *Form FRA F 6180.54.* FRA is revising block 30 by changing the name of the block from "Methods of Operation" to "Type of Territory." The block will have five coding blocks. Each of the five coding blocks printed in block 30 will be labeled for exclusive use in accordance with codes listed in Appendix J. The coding blocks are representative of the following information: The first block (mandatory) will indicate the type of territory (signaled or non-signaled); the second block (mandatory) will indicate the authority for movement; and the third, fourth, and fifth blocks (optional) will indicate additional information through the use of supplemental codes.

FRA is making this change because in the past few years, with the advancement of PTC, there has been a growing requirement for FRA to definitively identify signalized versus "dark" territory.

The revisions should make completing the block less burdensome and allow for the identification of territory in a manner compatible with the railroads' internal railroad coding system. These changes are consistent with suggestions by railroads and the AAR that such coding be made easier and that the FRA Guide provide clearer instruction. They also take into consideration railroad concerns about expense associated with having to revise the form and expressed the desire for FRA to retain the current form and redesign the coding system but not change the database structure or the record size. *See* FRA Guide, Appendix J, "Type of Territory Codes" for additional information.

FRA is renaming block 12, "Division" to "Subdivision" and requiring railroads to provide train accident location by subdivision data (block 12) on Form FRA F 6180.54 as a means of improving railroad safety in the area of train accidents. If the railroad is not so divided, enter the word "system." If subdivision data is not applicable, the railroad must enter terminal/yard name.

FRA also revises this form to require latitude and longitude. This revision is

[7] PTC refers to technology that is capable of preventing certain train collisions, derailments, and unauthorized train movements.

discussed in detail in FRA Guide, Chapter 6, Form FRA F 6180.55a.

FRA is adding to block 49, "Special Study Block" descriptive references "a." to line one and "b." to line two for ease of reference. FRA requires railroads to indicate in block "Special Study Block" 49a the type of track an accident/incident occurred on, by using the codes "CWR" for continuous welded rail or "OTH" for other. FRA notes that the special study block was created to allow for the collection of specific accident information as the need arises. *See* 61 FR 30940, June 18, 1996. The primary purpose of these revisions to the rule is to increase the accuracy, completeness, and utility of FRA's accident database and the clarity of the definitions and requirements. In light of recent track-related accidents/incidents, FRA finds it necessary to gather and analyze data of this nature. The collection and analysis of this data is consistent with 49 CFR part 213 regarding joint bar inspection and reporting.

To account for suicides and attempted suicides on Form FRA F 6180.54, FRA adds four Miscellaneous Cause Codes to Appendix C for use in block 38, Primary Cause Code: M309 "Suicide (Highway-Rail Grade Crossing)"; M310 "Attempted Suicide (Highway-Rail Grade Crossing)"; M509 "Suicide (Other Misc.)"; and M510 "Attempted Suicide (Other Misc.)" to Appendix C, "Train Accident Cause Codes" to indicate "Suicide or Attempted Suicide." Additionally, FRA requires railroads to include suicides and attempted suicides in the casualty counts in boxes 46, 47, and 48, as applicable, and to maintain consistent casualty counts between the different reporting forms.

FRA, for all highway-rail grade crossing fatalities, requires railroads to include a description in narrative block 52 of the circumstances of the accident.

FRA also requires that, if an accident is caused by a bond wire attachment issue (*see* proposed Appendix C "Train Accident Cause Codes"), information on the methods and locations of those attachments be provided in the narrative block 52.

(7) *Forms FRA F 6180.54 and FRA F 6180.57.* The final rule revises the "Type of Equipment" block—block 25 on Form FRA F 6180.54 and block 24 on Form FRA F 6180.57—as follows:

- Code "2" was changed from "Passenger Train" to "Passenger Train—Pulling;"
- Code "3" was changed from "Commuter Train" to "Commuter Train—Pulling;"
- New code "B" reads "Passenger Train—Pushing;"
- New code "C" reads "Commuter Train—Pushing;"
- New Code "D" reads "EMU Train;" and
- New Code "E" reads "DMU Train."

These amendments allow for the delineation of additional types of equipment in FRA's database, specifically, locomotives pushing or pulling, and EMU and DMU trains. The need for such information comes in light of the 2005 passenger train accident, in which an impact with a deliberately placed obstruction caused a derailment with two consequent secondary collisions in Glendale, California, in which a number of individuals were killed or injured. Subsequent to that event, FRA was asked to conduct analysis regarding the relative safety of trains with passenger-occupied cars in the lead. Under its prior reporting criteria, FRA could not determine from the database if the passenger or commuter equipment being used was in "pull" or "push" mode at the time of an accident/incident (*i.e.,* whether the locomotive unit providing power was in the front or back of the train). In addition, because EMU and DMU trains neither push nor pull as all of the cars provide power to the train, FRA needed a code to accurately describe that circumstance as well.

(8) *FRA Form FRA F 6180.57.* The final rule revises block 16, "Position," to read as follows: (1) Stalled or stuck on crossing (currently "Stalled on Crossing"); (2) Stopped on crossing; (3) Moving over crossing; (4) Trapped on crossing by traffic (currently "Trapped"); and (5) Blocked on crossing by gates. In doing so, FRA clarifies the difference between choices (1) and (4). FRA has found that under the prior options railroads did not necessarily understand that prior option (4) "Trapped" means trapped by traffic. The final rule also adds a fifth option, (5) "Blocked on crossing by gates," to capture those situations where a highway user is prevented from leaving the crossing because the highway user is blocked-in by the crossing gates.

The final rule also revises block 34 by changing the title from "Whistle Ban" to "Roadway Conditions" and by including the following options: (A) Dry; (B) Wet; (C) Snow/Slush; (D) Ice; (E) Sand, Mud, Dirt, Oil, Gravel; and (F) Water (Standing, Moving). Block 34 captures the roadway conditions at the time of the highway-rail grade crossing accident/incident. This information is needed because data provided to FRA regarding "Weather Conditions" in block 23 does not necessarily speak to road conditions. For example, while the weather may be clear at the time of a highway-rail grade crossing accident/incident, the roadway may be wet, covered with snow, or icy. This revision provides FRA with vital information useful in assessing the risks and causes of highway-rail grade crossing accident/incidents. In addition, FRA no longer needs to capture Whistle Ban/Quiet Zone information in Form FRA F 6180.57, as this information is provided to FRA in Quiet Zone Notices of Establishment. *See* FRA 49 CFR part 222.

The final rule revises the title of block numbers 38, "Drivers Age;" 39, "Driver's Gender;" 40, "Driver Drove Behind or in Front of Train and Struck or was Struck by Second Train;" and 41, "Driver," by replacing the term "Driver" or "Driver's" with "Highway User" or "Highway User's", as applicable. In addition, the final rule revises block numbers 40 (in block title) and 41 (in block's response options) by replacing the term "drove" with "went." Such changes clarify that railroads should provide the information for all highway users involved in a highway-rail grade crossing accident/incident, rather than just for drivers.

The final rule revises block 41 by adding the following descriptive options: "Went around/thru temporary barricade" and "Suicide/Attempted suicide." The final rule also revises the "Drove around or thru the gate" descriptor to two separate descriptive choices: "Went around the gate"; and "Went thru the gate." If "Went around/thru temporary barricade" is selected in block 41 due to the temporary closure of the crossing, the circumstance of the closure (*e.g.,* the roadway was closed for repair of crossing surface; maintenance/testing of automated warning devises; *etc.*) should be explained in narrative in block 54. Additionally, such a narrative should explain how the closure was accomplished (*e.g.,* roadway closed to traffic with jersey barriers (concrete traffic barriers) on both approaches; roadway closed with construction barrels on easterly approach; *etc.*). In the event of a suicide or attempted suicide, option 8, "Suicide/Attempted suicide" must be indicated in block 41, regardless of whether other choices may also be applicable. The final rule requires the inclusion of the suicide or attempted suicide in the casualty counts in block numbers 46, 49, and 52, as applicable, to maintain consistent casualty counts between the different reporting forms.

The final rule revises the title of block 48, "Total Number of Highway-Rail Crossing Users" to read "Total Number of Vehicle Occupants (including driver)." Collection of this data allows

FRA to cross-check "Casualties to:" block 46 with the number of vehicle occupants in block 48. FRA has found that this information is an important tool in analyzing reports and ensuring continuity and compliance in reporting. In accordance with Chapter 2 of the FRA Guide, vehicles include automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation, motorized, and unmotorized.

The final rule requires, in "Special Study Block" 53a, that railroads indicate whether the highway-rail crossing accident/incident was recorded by a locomotive video recorder and, if so, whether information gathered in viewing the recording was used by the railroad to complete the FRA Highway-Rail Grade Crossing Accident/Incident Report. To facilitate the collection of this information, FRA includes instructions in the FRA Guide and places two sets of "yes or no" options in block 53a; one for "video taken" and one for "video used." This information provides FRA with knowledge of the availability of video footage for particular accidents/incidents; how often and to what degree railroads are collecting and reviewing video footage of these accidents/incidents; and make available to FRA an additional tool to study the causes and circumstances of these accident/incidents. Whether or not video footage was captured and reviewed for a particular accident/incident may also serve as an indicator as to the accuracy of the railroad's accident/incident report. For additional information on requirements related to locomotive event recorders, see 49 CFR 229.135, "Event Recorders."

The final rule includes instructions that railroads should limit the use of the "unknown" option in block 36, "Crossing Warning Interconnected with Highway Signals" and block 37, "Crossing Illuminated by Street Lights or Special Lights." FRA has found that numerous completed Form FRA F 6180.57 forms are submitted to the agency with "unknown," marked in block numbers 36 and/or 37. Railroads have an obligation to submit accurate reports to FRA and may not simply mark "unknown" without investigating the matter. As such, block 36 requires that a railroad must only enter option 3, "unknown," after having first consulted with the signal department of the railroad responsible for track maintenance in an effort to obtain the information. In Block 37, the railroad must only enter option 3, "unknown" after the railroad has first made a diligent effort to discern the relevant lighting conditions in an effort to obtain the information, but still cannot make a determination. These limitations will increase the quality and accuracy of data the agency gathers related to highway-rail grade crossing accidents/incidents by requiring railroads to make an effort to gather the information.

In the NPRM, FRA requested comments and suggestions for any additional information that might be gathered on Form FRA F 6180.57, that would be useful in determining how and why highway-rail grade crossing accidents/incidents occur. This final rule makes several revisions to the FRA Guide specifically regarding Form FRA F 6180.57 based on the comments received, in addition to other changes proposed in the NPRM.

Specifically, the final rule revises the FRA Guide to clarify that block 41's "other" designation should be selected for drivers who were shoved onto the track and who were then in a collision, so that the accident/incident may be described in the narrative section. The final rule also revises the FRA Guide regarding block 14 in order to clarify that the inclusion of a vehicle speed of 0 mph when the form elsewhere indicates that the vehicle was moving over the crossing or around the gate is prohibited. The final rule also revises the FRA Guide by designating block 39 ("Highway user's Gender") as a mandatory field, unless the gender is unknown as a result of the accident/incident being a hit and run. The final rule also revises the FRA Guide by designating block 38 (Highway user's Age) as a mandatory field, unless the highway user's age is unknown as a result of the accident/incident being a hit and run. In addition, the final rule revises the FRA Guide by clarifying that block 6 seeks the time of the accident/incident in the local time of the location where the accident/incident occurred (the time in the headquarters should not be used).

One commenter asserted that some of the publicly-submitted comments regarding Form FRA F 6180.57 were improper because they were new and should be pursued in a separate rulemaking. However, interested parties had opportunities to address such comments during the hearing and in the second comment period. In addition, the interested parties were on notice that FRA was interested in receiving suggested changes to Form FRA F 6180.57. The revisions to the FRA Guide regarding Form FRA F 6180.57 are a logical outgrowth of this notice. A commenter also requested that no additional fields be added to the form because any such additions would be unduly burdensome. However, the final rule does not add additional fields, and only clarifies the available selections for existing fields.

FRA received the following other comments regarding proposed Form FRA F 6180.57 revisions that are not adopted in this final rule:

- A commenter requested that FRA revise block 32 by adding a field to indicate whether there was a stop/yield sign at the highway-rail grade crossing, to determine whether such signs are effective. This final rule does not adopt this suggestion because this data can be captured in the U.S. DOT National Highway-Rail Crossing Inventory.
- A commenter requested that FRA eliminate the "Watchman" code in block 32 because it is rarely used. The final rule does not adopt this suggestion because the "Watchman" code provides valuable safety data.
- A commenter requested that FRA revise block 32 by adding a field to show whether the crossing warning was a pedestrian or vehicular warning device. The final rule does not adopt this suggestion because block 32 sufficiently captures data relating to the type of crossing warning.
- A commenter requested that Form FRA F 6180.57 be revised to collect "near miss" information. The final rule does not adopt this suggestion because it would be very difficult to obtain such information and it is overly burdensome.
- A commenter requested that Form FRA F 6180.57 require railroad carriers to submit up-to-date crossing information because the inventory is out of date. The final rule does not adopt this suggestion because § 204 of the Railroad Safety Improvement Act of 2008, once implemented, imposes a mandatory inventory updating scheme for both States and railroads.
- A commenter requested that Form FRA F 6180.57 capture whether trains involved in highway-rail grade crossing accidents/incidents had retroreflective sheeting. The final rule does not adopt this suggestion because, in general, all trains will be required to have such retroreflective sheeting, capturing the data is overly burdensome, and it would be difficult to enforce.
- A commenter requested that Form FRA F 6180.57 be reconciled with the U.S. DOT Crossing Inventory Form, so that discrepancies between the forms would be flagged. The final rule does not adopt this suggestion because it is not germane to the substance of Form FRA F 6180.57, and FRA can check for mismatches in certain data fields between the Form FRA F 6180.57 and the U.S. DOT Crossing Inventory Form.

• A commenter requested that Form FRA F 6180.57 capture the relevant police report number for reported accidents/incidents as well as the police department information. The final rule does not adopt this suggestion because it does not contribute material safety information to the Form, is overly burdensome, and is not supported by the November 28, 2005, report by the Department of Transportation's Office of Inspector General, entitled, "Audit of Oversight of Highway-Rail Grade Crossing Accident Reporting, Investigations, and Safety Regulations," Report No. MH–2006–016.

• A commenter requested that Form FRA F 6180.57 require a narrative when "other" is checked in a data field and when there is a collision resulting in a fatality. The final rule does not make any revisions to Form FRA F 6180.57 in response to this suggestion because the narrative is already mandatory in such cases.

• A commenter requested that Form FRA F 6180.57 capture the total tonnage of trains involved in collisions. The final rule does not adopt this suggestion because such data does not contribute additional material safety information as the U.S. DOT Crossing Inventory Form captures the number of trains that use the track.

• A commenter requested that Form FRA F 6180.57 capture whether the train or the automatic warning device at the crossing had an event recorder. The final rule does not adopt this suggestion because such data does not contribute material safety information to the Form.

• A commenter requested that Form FRA F 6180.57 capture annual track density and total train tonnage. The final rule does not adopt these suggestions because such data does not contribute material safety information to the Form.

• A commenter requested that Form FRA F 6180.57 capture the relevant posted speed limit. The final rule does not adopt this suggestion because such data can be captured in the U.S. DOT National Highway-Rail Crossing Inventory.

• A commenter requested that Form FRA F 6180.57 capture, with respect to collisions that occur at a private crossing, whether the crossing was located within the limits of a railroad yard and whether the collision involved an on-duty railroad employee or contractor. The final rule does not adopt this suggestion because such data does not contribute material safety information to the Form, there are few such accidents, and such information may be captured by the Form FRA F 6180.55a if the accident resulted in an injury or a fatality.

• A commenter requested that Form FRA F 6180.57 capture data regarding the quality and "rideability" of the surface of the highway-rail grade crossing at the time of the collision. The final rule does not adopt this suggestion because it is subjective, difficult data to capture, and overly burdensome.

• A commenter requested that Form FRA F 6180.57 capture data regarding whether a sidewalk was available for non-motorized vehicles, the type of sidewalk, and whether the person used the sidewalk. The final rule does not adopt this suggestion because it is overly burdensome.

• Lastly, a commenter requested that Form FRA F 6180.57 capture whether a traffic violation was issued. The final rule does not adopt this suggestion because such data does not contribute material safety information to the Form.

FRA received another comment taking the position that some comments regarding Form FRA F 6180.57 are not proper because they are new and should be pursued in a separate rulemaking. The final rule does adopt some of the comments, as discussed above. Interested parties had an opportunity to respond during the hearing and in the second comment period. In addition, the interested parties were on notice that FRA was interested in receiving suggested changes to Form FRA F 6180.57. Revisions to Form FRA F 6180.57 and the FRA Guide are a logical outgrowth of this notice.

FRA notes that the final rule makes many of the Form FRA F 6180.57 revisions in response to a November 28, 2005, report by the Department of Transportation's Office of Inspector General, entitled, "Audit of Oversight of Highway-Rail Grade Crossing Accident Reporting, Investigations, and Safety Regulations, Report No. MH–2006–016.

(9) *Form FRA F 6180.107.* FRA revises block 6 on Form FRA F 6180.107, "Employee Number or Social Security Number" to "Employee Identification Number" to address privacy concerns.

FRA revises block 23 on Form FRA F 6180.107 "Date the Log Entry was Completed (mm/dd/yy)" to state "Date initially signed/completed." FRA made this change to clarify that the block must contain the initial date the form was completed. FRA finds it necessary to make such change because the agency has found certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. FRA is making this revision to ensure that it can discern if the railroad entered each claimed occupational illness on the appropriate record no later than seven calendar days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required in § 225.25(i)(2). FRA believes that by specifying the date required to be maintained on the record, any confusion regarding the requirement will be resolved.

The final rule revises Questions and Answers section at the bottom of the form as the form no longer has a data element for an employee's social security number. Rather, employee social security number has been replaced with field requesting the employee's identification number. This is a clarifying amendment is meant to make the Questions and Answers section accurate and consistent with the changes to the form.

(10) *Form FRA F 6180.150.* In the final rule, FRA included a draft of this form dealing with following up with potentially injured highway user involved in a highway-rail grade crossing accident/incident. *See* FRA Guide, Chapters 10 and 6 of this final rule for further discussion. Form FRA F 6180.150 was submitted to OMB for approval with the final rule and is still pending OMB approval; therefore, the railroads cannot use the form until it has been approved. FRA expects that prior to the delayed six month effective date, the form will be approved.

(11) *Form FRA F 6180.56.* The final rule amends Block 6, State, by adding Hawaii to the list of States. Hawaii was mistakenly omitted. This is a technical amendment and should not create additional reporting requirements for the railroads.

Appendix I, "Model Internal Control Plans, Including Model Statement of Policy against Harassment and Intimidation and Model Complaint Procedures."

The FRA Guide reorders the ICP components in Appendix I's sample Internal Control Plan (ICP) to more closely model the listing of components as set forth in § 225.33.

Appendix J, "Type of Territory Codes."

FRA adds an Appendix J to the FRA Guide, which provides Type of Territory Codes and instructions for the use of those codes when completing block 30, "Type of Territory," on Form FRA F 6180.54, "Rail Equipment Accident/Incident Report." The codes represent type of territory (*i.e.,* signaled territory versus non-signaled territory); the authority for movement (*i.e.,* signal indication; mandatory directive; other than main track—Rule 105); and additional miscellaneous supplemental codes. *See* FRA Guide, Appendix H,

"Forms" in this final rule for additional information.

Appendix K, "*Electronic Submission of Reports to FRA.*"

The FRA Guide adds Appendix K to specifically provide electronic submission instructions and guidance.

Appendix L, "*49 CFR part 225.*"

The FRA Guide includes in Appendix L the full regulatory text of part 225.

Appendix M, "*Telephonic Reporting Chart.*"

The FRA Guide revises the Telephonic Reporting Chart to correct an error. This clarification is intended to bring the chart into compliance with the rule text. Specifically, this change simply instructs the user to look at other reasons why telephone notification may be required regardless of whether the answer to the question—"Was the fatality to Railroad Employee, Contractor on Railroad Property, Passenger, Highway User due to collision with railroad rolling stock?"—is "No."

Appendix N, "*Form FRA F 6180.150,* "*Highway User Injury Inquiry Form,*" *Sample Cover Letter.*"

The final rule included a sample cover letter that the railroads could use to comply with the requirement that they send a Form FRA F 6180.150 and a cover letter to each potentially injured highway user involved in a highway-rail grade crossing accident/incident. The cover letter must be drafted and comply with the requirements outlined in § 225.21 and the FRA Guide at Chapter 10.

With regard to the cover letter, the instructions contained in the final rule require that the letter contain the following:

- An explanation of why the railroad is contacting the highway user;
- An explanation of part 225 accident/incident reporting requirements;
- An explanation of how the form and any response will be used for part 225 reporting requirements;
- An explanation that the highway user is not required to respond;
- An opportunity to correct incorrect information in Part I;
- Identify and provide contact information for a person at the railroad who can answer questions with regard to the form;
- Provide instructions on how to complete Part II; and,
- An explanation of how any medical records or information will be handled.

The cover letter and Form FRA F 6180.150 are meant to be tools that allow the railroad to gather information and comply with part 225 accident/incident reporting and recording requirements. As such, the railroad the cover letter should not require the highway user to provide any medical or personal information in order to report a casualty. Moreover, the cover letter and any communication for the purposes of part 225 should not reference claims process.

V. 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 final rule. 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–2006–26173.

The changes in this final rule would serve to simplify accident/incident reporting for railroads, ensure that railroad worker casualty statistics conform to the same criteria as statistics from other Federal agencies, and improve the quality of data available for analysis of railroad accidents and incidents.

The amendments to part 225 will increase the accuracy, precision, completeness of railroad accidents/incident records and reports, and correspondingly, FRA's and the railroad industry's information base related to accidents and incidents. This increased awareness will not only aid FRA in assessing and managing risk, but aid railroads, their employees, and other interested parties in recognizing and correcting dangerous conditions and practices in order to maintain a safe and healthy environment for railroad workers and the public. Moreover, FRA anticipates that requirements related to the collection of longitude and latitude data for trespasser accidents/incidents on Form FRA F6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" will reduce trespasser casualties. In addition to the final revisions to its regulations contained in this notice, FRA is revising the FRA Guide for Preparing Accident/Incident Reports, certain accident/incident recording and reporting forms, and the FRA Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods.

When quantifiable, FRA estimated costs and benefits for the twenty-year period immediately following implementation of this final rule. FRA estimated total, present discounted costs to equal approximately $5.5 million using a 3 percent discount rate and $3.9 million using a 7 percent discount rate. Total, present discounted benefits are estimated to equal approximately $51 million at a 3 percent discount rate and $32.2 million at a 7 percent discount rate.

The net present discounted benefits of the impacts quantified in this analysis equal approximately $45.5 million at a discount rate of 3 percent and $28.3 million at a discount rate of 7 percent.

FRA expects that the benefits flowing from this final rulemaking will surpass any additional costs imposed by the regulation. Most significant are benefits arising from the final rule's requirement that longitude and latitude blocks on Form FRA F6180.55a be completed for trespassers. This requirement will ultimately result in fewer trespasser injuries and fatalities. Additional benefits will arise from consolidated reporting provisions, the easing of telephonic reporting requirements, and accident/incident reporting simplification. Lastly, FRA anticipates substantial but presently unquantifiable benefits flowing from more precise and complete accident/incident reporting data. Not only does the analysis of reported data provide information as to the cause of an accident/incident, this data can help determine trends, assess hazards, and assist in the development of effective countermeasures that may then be implemented to prevent similar accidents and incidents from occurring in the future. More precise and complete data will also help to identify where safety-oriented programs should be focused and aid railroads and FRA in setting priorities among inspection and safety improvement efforts. Accordingly, FRA is confident that such benefits, combined with those that were quantified, will more than justify

incurring the costs associated with implementation of the final rule.

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 final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the rule, none of these entities will be significantly impacted. At the NPRM stage, FRA certified that the proposal would not result in a significant economic impact on a substantial number of small entities and requested comment on such certification as well all other aspects of the NPRM. Although many comments were received in response to the NPRM, no comments directly addressed the certification. In developing the final rule, FRA considered all comments received in response to the 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, section 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. SBA's "size standards" may be altered by Federal agencies, 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. This final rule applies to railroads.[8] There are approximately 665 small railroads that would be affected by this final rule. FRA anticipates that most of the recording and reporting burdens imposed by this regulation will be borne by railroads that are not considered small, due to the decreased likelihood that a small railroad will experience an accident/incident necessitating such recording and/or reporting. For example, on average from 2005 through 2007, small railroads reported approximately 875 or nine percent of all reportable casualties, and only 294 or 10 percent of all reportable accidents/incidents.

FRA also anticipates that the computer-related burdens will be borne by the larger railroads because the large railroads have chosen to retain their accident/incident records and reports electronically in their own systems. Large railroads also submit their accident/incident reports to FRA electronically via their own systems. Most small railroads complete their federally required accident/incident recordkeeping and reporting on a personal computer using FRA supplied Accident/Incident Report Generator (AIRG) software. This software allows railroads to send reports to FRA on a CD–ROM or to transmit the information to FRA over the Internet. FRA will send a free updated or new version of the AIRG software to any railroad that requests it. Other small railroads do not use a computer system for reporting. Accordingly, FRA does not anticipate that these burdens will be imposed on small entities.

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 the total cost incurred is far less than one percent of the annual average revenue for small railroads (approximately $47,000 each in 2006 (not discounted)). Total costs to small railroads due to this final regulation will be approximately $159 (not discounted) per railroad during the first year of the analysis. This burden is solely due to the time (3 hours each) for reporting officers to become acquainted with the revised FRA Guide. On an individual basis, FRA estimates that $159 is one percent or more of the annual operating revenues for less than one percent of all small railroads. FRA estimates the total cost for years 2 through 20 will be less than $100 for small railroads impacted (not discounted) per year, and that the small railroads will experience a positive net benefit for those years. 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. Paperwork Statement—Accident/Incident Reporting and Recordkeeping

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
225.6—Consolidated Reporting—New Requirements—Written Request by RR.	718 railroads	4 requests	40 hours	160
—Written agreements on subsidiaries	718 railroads	4 agreements	2 hours	8

[8] Note that FRA has not, unless specifically noted, updated the data used in this analysis from the Certification Statement for the NPRM. Adjustments were not made for this final certification because they would not significantly affect numerical estimates, would result in very few additional costs and would not change the outcome or results of the analysis.

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Notifications on changes to subsidiaries and amended written agreement.	718 railroads	1 notification + 1 agreement.	1 hr. + 1 hr	2
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	718 railroads	3,300 reports	15 minutes	825
225.11—Reporting of Rail Equipment Accidents/Incidents (Form FRA F 6180.54).	718 railroads	3,600 forms	2 hours	7,200
225.12(a)—Form FRA F 6180.81—Rail Equipment Accident/Incident Reports—Human Factor.	718 railroads	1,600 forms	15 minutes	400
225.12(b)—Form FRA F 6180.78—Part I Rail Equipment Accident/Incident Reports (Human Factor).	718 railroads	1,000 notices + 4,000 copies + 10 copies.	10 minutes + 3 minutes.	367
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	718 railroads	100 requests	20 minutes	33
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	718 railroads	20 attachments + 20 notices.	15 minutes	10
225.12(g)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement—Part II Form FRA F 6180.78.	718 railroads	75 statements	1.5 hours	113
225.12(g)(3)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	RR Employees	10 letters	2 hours	20
225.13—Late Reports	718 railroads	25 reports	1 hour	25
—Amended Rail Equipment Accident/Incident Reports	718 railroads	50 amended rpts/40 copies.	1 hour + 3 minutes	52
225.18—Alcohol or Drug Involvement	718 railroads	80 reports	30 minutes	40
—Appended Reports	718 railroads	5 reports	30 minutes	3
225.19—Highway-Rail Grade Crossing Accident/Incident Reports—Form FRA F 6180.57.	718 railroads	2,880 forms	2 hours	5,760
—Death, Injury, or Occupational Illness—(Form FRA F 6180.55a).	718 railroads	11,544 forms	20 minutes	3,848
—Trespasser Fatalities (FRA F 6180.55a)	718 railroads	486 forms	50 minutes	405
—New Requirement—Suicide/Attempted Suicide Data (FRA F 6180.55a).	718 railroads	608 forms	65 minutes	659
225.21 Forms				
—Form FRA F 6180.55—Railroad Injury/Illness Summary	718 railroads	8,616 forms	10 minutes	1,436
—Form FRA F 6180.56—Railroad Annual Report of Man Hours by State.	718 railroads	718 forms	15 minutes	180
—Form FRA F 6180.98—Railroad Employee—Injury and/or Illness Record.	718 railroads	18,900 forms	1 hour	18,900
—Form FRA F 6180.98—Copies	718 railroads	567 copies	2 minutes	19
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	718 railroads	18,200 forms	30 minutes	9,100
—New Requirement—Suicide/Attempted Suicide Narrative—Form FRA F 6180.97.	718 railroads	1 form	30 minutes	1
—Form FRA F 6180.107—Alternate Record for Illnesses Claimed To Be Work Related.	718 railroads	300 forms	75 minutes	375
—Form FRA F 6180.39i—RR Accident Notification & Initial Investigation Report.	654 Class I & II RR/55 Federal/State agencies/562 inspectors.	1,000 forms	90 minutes	1,500
—New Requirement—Form FRA F 6180.150—Highway User Statement—Sent Out by RRs to Potentially Injured Individuals.	718 railroads	950 forms	50 minutes	792
—New Requirement—Form FRA F6180.150—Highway User Statement Return Responses by Persons.	950 possibly injured individuals.	665 forms	45 minutes	499
225.25—Posting of Monthly Summary	718 railroads	8,616 lists	16 minutes	2,298
225.27—Retention of Records—FRA F 6180.98 (New Requirement).	718 railroads	18,900 records	2 minutes	630
—Form FRA F 6180.107	718 railroads	300 records	2 minutes	10
—Monthly List of Employee Injuries	718 railroads	8,616 records	2 minutes	288
—Form FRA F 6180.97 records	718 railroads	18,200 records	2 minutes	607
—Records required under section 225.12	718 railroads	2,675 records	2 minutes	89
—New Requirement—Electronic Recordkeeping System Requirements and RR System Modifications.	718 railroads	18 systems	120 hours	2,160
225.33—Internal Control Plans—Amended	718 railroads	25 amendments	14 hours	350
225.35—Access to Records and Reports—Lists	15 railroads	400 lists	20 minutes	133
—Subsequent Years	4 railroads	16 lists	20 minutes	5
225.37—Optical Media Transfers	8 railroads	200 transfers	3 minutes	10
—Electronic Submissions—Form FRA F 6180.55	718 railroads	2,400 forms	3 minutes	120
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225.37—Optical Media Transfers	8 railroads	200 transfers	3 minutes	10
—Electronic Submissions—Form FRA F 6180.55	718 railroads	2,400 forms	3 minutes	120

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292 or Ms. Kimberly Toone at 202–493–6132 or via e-mail at the following addresses: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot 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 this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), which 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 proposed 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.

FRA has determined that this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among various levels of government. In addition, FRA has determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. AAJ commented that FRA should delete any language in the preamble regarding the preemption of State common law claims. AAJ stated that, contrary to the agency's assertions, the Federal Railroad Safety Act of 1970 (FRSA) does not authorize the preemption of State common law claims. AAJ claimed that FRA regulations have never lawfully preempted State law claims. The petition also stated that Congress reiterated its intent to preserve State tort claims against negligent railroads. Finally, AAJ argued that agency rules must clearly follow the FRSA's limited preemption language, and that State common law should govern railroad safety issues.

Although this final rule removes the preemption language previously contained in part 225, FRA notes that this part could have preemptive effect by the operation of law under the FRSA. *See* 49 U.S.C. 20106. 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 issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to § 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, and has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. 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.

F. Environmental Impact

FRA has evaluated this final 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 final 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:

> 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: * * * 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 final rule is not a major Federal action significantly affecting the quality of the human environment.

G. 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.

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 final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

Interested parties should be aware 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.*). To get more information on this matter and to view the Regulations.gov Privacy Notice go to *http://www.regulations.gov/search/footer/privacyanduse.jsp.* 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 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 225 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 225.1 is revised to read as follows:

§ 225.1 Purpose.

The purpose of this part is to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its regulatory responsibilities under 49 U.S.C. chapters 201–213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents. Any State may require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that State.

■ 3. Section 225.3 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 225.3 Applicability.

* * * * *

(b) The Internal Control Plan requirements in § 225.33(a)(3) through (a)(11) do not apply to—

* * * * *

■ 4. Section 225.5 is amended as follows:

■ a. By adding definitions for "discernable cause," "event or exposure," "injury or illness," "railroad carrier," "significant aggravation of a pre-existing injury or illness," and "suicide data";

■ b. By revising paragraphs (1) and (3) in the definition of "accident/incident"; and

■ c. By revising the definitions of "accountable injury or illness," "accountable rail equipment accident/incident," "event or exposure arising from the operation of a railroad," "general reporting criteria," "highway-rail grade crossing," "new case," "qualified health care professional," "railroad," "work environment," and "work-related."

The additions and revisions read as follows:

§ 225.5 Definitions.

As used in this part—

Accident/incident means:

(1) Any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing. The term "highway user" includes automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation motorized and un-motorized;

* * * * *

(3) Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6) if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause.

Accountable injury or illness means any abnormal condition or disorder of a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional, regardless of whether or not it meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6), and the railroad employee claims that, or the railroad otherwise has knowledge that, an event or exposure arising from the operation of the railroad is a discernable cause of the abnormal condition or disorder.

Accountable rail equipment accident/incident means

(1) Any derailment regardless of whether or not it causes any damage or

(2) Any collision, highway-rail grade crossing accident/incident, obstruction accident, other impact, fire or violent rupture, explosion-detonation, act of God, or other accident/incident involving the operation of railroad on-track equipment (standing or moving) that results in damage to the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed and that damage impairs the functioning or safety of the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed.

* * * * *

Discernable cause means a causal factor capable of being recognized by the senses or the understanding. An event or exposure arising from the operation of a railroad is a discernable cause of (*i.e.,* discernably caused) an injury or illness if, considering the circumstances, it is more likely than not that the event or exposure is a cause of the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (*i.e.,* a contributing factor).

* * * * *

Event or exposure includes an incident, activity, or occurrence.

Event or exposure arising from the operation of a railroad means—

(1) With respect to a person who is not an employee of the railroad:

(i) A person who is on property owned, leased, maintained or operated by the railroad, an event or exposure that is related to the performance of the railroad's rail transportation business; or

(ii) A person who is not on property owned, leased, maintained or operated over by the railroad, an event or exposure directly resulting from one or more of the following railroad operations:

(A) A train accident, a train incident, or a non-train incident involving the railroad; or

(B) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

(2) With respect to a person who is an employee of the railroad, an event or exposure that is work-related.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1) through (6).

Highway-rail grade crossing means:

(1) A location where a public highway, road, or street, or a private roadway, including associated sidewalks, crosses one or more railroad tracks at grade; or

(2) A location where a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks at grade. The term "sidewalk" means that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or, on easements of private property, that portion of a street that is paved or improved and intended for use by pedestrians.

Injury or illness means an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as but not limited to, a skin disease, respiratory disorder, or poisoning. A musculoskeletal disorder is also an injury or illness. Pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (6).

* * * * *

New case means a case in which either the injured or ill person has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the injured or ill person previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and/or symptoms disappeared) from the previous injury or illness, and an event or exposure arising from the operation of a railroad discernably caused the signs and/or symptoms to reappear.

* * * * *

Qualified health care professional is a health care professional operating within the scope of his or her license, registration, or certification. In addition to licensed physicians, the term includes members of other occupations associated with patient care and treatment such as chiropractors, podiatrists, physicians assistants, psychologists, and dentists.

Railroad means a railroad carrier.

Railroad carrier means a person providing railroad transportation.

* * * * *

Significant aggravation of a pre-existing injury or illness means aggravation of a pre-existing injury or illness that is discernably caused by an event or exposure arising from the operation of a railroad that results in:

(1) With respect to any person:

(i) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the event or exposure;

(ii) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the event or exposure; or

(iii) Medical treatment in a case where no medical treatment was needed for the injury or illness before the event or exposure, or a change in the course of medical treatment that was being provided before the event or exposure.

(2) With respect to a railroad employee, one or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the event or exposure.

* * * * *

Suicide data means data regarding the death of an individual due to the individual's commission of suicide as determined by a coroner, public police officer or other public authority or injury to an individual due to that individual's attempted commission of suicide as determined by a public police office or other public authority. Only the death of, or injury to, the individual who committed the suicidal act is suicide data. Therefore, casualties to a person caused by the suicidal act of another person are not considered suicide data.

* * * * *

Work environment means the establishment and other locations where one or more railroad employees are working or present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials processed or used by an employee during the course of his or her work, and activities of a railroad employee associated with his or her work, whether on or off the railroad's property.

Work-related means related to an event or exposure occurring within the work environment. An injury or illness is presumed work-related if an event or exposure occurring in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The causal event or exposure need not be peculiarly occupational so long as it occurs at work. For example, a causal

event or exposure may be outside the employer's control, such as a lightning strike; involve activities that occur at work but are not directly productive, such as horseplay; or involve activities that are not peculiar to work, such as walking on a level floor, bending down, climbing stairs or sneezing. Such activities, along with other normal body movements, are considered events. So long as the event or exposure occurred at work and is a discernable cause of the injury or illness, the injury or illness is work-related. It does not matter whether there are other or bigger causes as well, or that the activity at work is no different from actions performed outside work. If an injury is within the presumption of work-relatedness, the employer can rebut work-relatedness only by showing that the case falls within an exception listed in § 225.15. In cases where it is not obvious whether a precipitating event or exposure occurred at work or outside work, the employer must evaluate the employee's work duties and environment and decide whether it is more likely than not that an event or exposure at work was at least one of the causes of the injury of the injury or illness.

■ 5. Section 225.6 is added to read as follows:

§ 225.6 Consolidated reporting.

A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of this part.

(a) The written request must include the following:

(1) A list of the subsidiary railroads controlled by the parent corporation; and

(2) An explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

(b) The request must be sent to the FRA Docket Clerk, Federal Railroad Administration, U.S. Department of Transportation, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–109, 1200 New Jersey Avenue, SE., Washington, DC 20590. Each request received shall be acknowledged in writing. The acknowledgment shall contain the docket number assigned to the request and state the date the request was received.

(c) FRA will notify the applicant parent corporation of the agency's decision within 90 days of receipt of the application.

(d) If FRA approves the request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, agreeing to assume responsibility for compliance with this part for all named subsidiaries making up the system, and consenting to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating Federal accident/incident reporting requirements. Any change in the subsidiaries making up the railroad system requires immediate notification to FRA and execution of an amended agreement. Executed agreements will be published in the docket.

■ 6. Section 225.7 is amended by revising paragraph (a) to read as follows:

§ 225.7 Public examination and use of reports.

(a) Accident/Incident reports made by railroads in compliance with these rules shall be available to the public in the manner prescribed by part 7 of this title. Accident/Incident reports may be inspected at the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety, West Building 3rd Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Written requests for a copy of a report should be addressed to the Freedom of Information Act Coordinator, Office of Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W33–437, 1200 New Jersey Avenue, SE., Washington, DC 20590, and be accompanied by the appropriate fee prescribed in part 7 of this title. To facilitate expedited handling, each request should be clearly marked "FOIA Request for Accident/Incident Report." For additional information on submitting a FOIA request to FRA see FRA's Web site at *http://www.fra.dot.gov/us/foia.*

* * * * *

■ 7. Section 225.9 is amended by revising paragraph (a)(2)(iii) and (iv) to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) * * *

(2) * * *

(iii) A fatality resulting from a train accident or train incident at a highway-rail grade crossing when death occurs within 24 hours of the accident/incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000 or more to railroad and nonrailroad property; or

* * * * *

■ 8. Section 225.11 is revised to read as follows:

§ 225.11 Reporting of accidents/incidents.

(a) Each railroad subject to this part shall submit to FRA a monthly report of all railroad accidents/incidents described below:

(1) Highway-rail grade crossing accidents/incidents described in § 225.19;

(2) Rail equipment accidents/incidents described in § 225.19; and

(3) Death, injury and occupational illness accidents/incidents described in § 225.19.

(b) The report shall be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of optical media or electronic submission via the Internet, as prescribed in § 225.37, and shall be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports shall be completed as required by the current FRA Guide. A copy of the FRA Guide may be obtained from the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25 West Building 3rd Floor, Room W33–107, 1200 New Jersey Avenue, SE., Washington, DC 20590 or downloaded from FRA's Office of Safety Analysis Web site at *http://safetydata.fra.dot.gov/officeofsafety/,* and click on "Click Here for Changes in Railroad Accident/Incident Recordkeeping and Reporting."

■ 9. Section 225.12 is amended by revising paragraph (g)(3) to read as follows:

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

* * * * *

(g) * * *

(3) Information that the employee wishes to withhold from the railroad must not be included in this Supplement. If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (part II of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), but rather provide such confidential information by other means, such as a letter to the employee's

collective bargaining representative, or to the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25 West Building 3rd Floor, Room W 33–306, 1200 New Jersey Avenue, SE., Washington, DC 20590. The letter should include the name of the railroad making the allegations, the date and place of the accident, and the rail equipment accident/incident number.

* * * * *

■ 10. Section 225.15 is revised to read as follows:

§ 225.15 Accidents/incidents not to be reported.

The following accidents/incidents are not reportable:

(a) *With respect to persons other than railroad employees.* A railroad is not to report injuries that occur at highway-rail grade crossings that do not involve the presence or operation of on-track equipment, or the presence of railroad employees then engaged in the operation of a railroad;

(b) *With respect to railroad employees on duty.* A railroad is not to report the following injuries to or illnesses of a railroad employee as Worker on Duty—Employee (Class A), if any of the conditions in this paragraph (b) are met. (These exceptions apply only to Worker on Duty—Employee (Class A) and do not affect a railroad's obligation to report these injuries and illnesses as other types of persons (Employee Not On Duty (Class B); Passenger on Trains (Class C); Nontrespassers-On Railroad Property (Class D); Trespassers (Class E)), or a railroad's obligation to maintain a "Railroad Employee Injury/Illness Record" (Form FRA F 6180.98 or alternative railroad-designed form)).

(1) The injury or illness occurred in or about living quarters and an event or exposure not arising from the operation of a railroad was the cause;

(2) At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee; or

(3) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

(c) *With respect to railroad employees on or off duty.* A railroad is not to report the following injuries to or illnesses of a railroad employee, Worker on Duty—Employee (Class A) or Employee Not on Duty (Class B), if any of the following conditions in this paragraph (c) are met:

(1) The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment;

(2) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball;

(3) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption. However, if the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related and reported as either a Worker on Duty—Employee (Class A) or Employee Not on Duty (Class B) depending on the employees duty status;

(4) The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours;

(5) The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted (except that for FRA reporting purposes a railroad shall not exclude an accountable or reportable injury or illness that is the result of a suicide or attempted suicide);

(6) The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work); or

(7) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, *etc.*) stating that the employee has a mental illness that is work-related.

(d) *With respect to contractors and volunteers.* A railroad is not to report injuries to contractors and volunteers that are listed in paragraphs (b) and (c) of this section. For purposes of this paragraph only, an exception listed in paragraphs (b) and (c) referencing "work environment" is construed to mean for contractors and volunteers only, on property owned, leased, operated over or maintained by the railroad.

(e) *With respect to rail equipment accidents/incidents.* A railroad is not to report rail equipment accidents/incidents if the conditions in this paragraph are met. (This exception does not affect a railroad's obligation to maintain records of accidents/incidents as required by § 225.25 (Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record")).

(1) Cars derailed on industry tracks by non-railroad employees or non-railroad employee vandalism, providing there is no involvement of railroad employees; and

(2) Damage to out of service cars resulting from high water or flooding (*e.g.,* empties placed on a storage or repair track). This exception does not apply if such cars are placed into a moving consist and as a result of this damage a reportable rail equipment accident results.

§ 225.17 [Amended]

■ 11. Section 225.17 is amended by removing paragraph (d).

■ 12. Section 225.18 is added to read as follows:

§ 225.18 Alcohol or drug involvement.

(a) In preparing Form FRA F 6180.54, "Rail Equipment Accident/Incident Report," under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(b) For any train accident within the requirement for post-accident testing under § 219.201 of this chapter, the railroad shall append to the Form FRA F 6180.54, "Rail Equipment Accident/Incident Report," any report required by 49 CFR 219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

(c) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

(d) In providing information required by this section, a railroad shall not disclose any information concerning use of controlled substances determined by the railroad's Medical Review Officer to have been consistent with 49 CFR 219.103.

■ 13. Section 225.19 is amended by revising paragraph (d) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) *Group III—Death, injury, or occupational illness.* Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in paragraphs (d)(1) through (6) of this section shall be reported to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause. The general injury/illness reporting criteria are as follows:

(1) Death to any person;

(2) Injury to any person that results in:

(i) Medical treatment;

(ii) Significant injury diagnosed by a physician or other licensed health care professional even if it does not result in death, medical treatment or loss of consciousness of any person; or

(iii) Loss of consciousness;

(3) Injury to a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Significant injury diagnosed by a physician or other licensed health care professional even if it does not result in death, medical treatment, loss of consciousness, a day away from work, restricted work activity or job transfer of a railroad employee;

(4) Occupational illness of a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer;

(iii) Loss of consciousness; or

(iv) Medical treatment;

(5) Significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that:

(i) Meets the application of any of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee;

(E) Musculoskeletal disorder of a railroad employee if this disorder is reportable under one or more of the general reporting criteria; or

(ii) Is a covered data case.

* * * * *

■ 14. Section 225.21 is amended by revising the introductory text and paragraph (j) and adding paragraph (k) to read as follows:

§ 225.21 Forms.

The following forms and copies of the "FRA Guide for Preparing Accident/Incident Reports" may be obtained from the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25 West Building 3rd Floor, Room W33–107, 1200 New Jersey Avenue, SE., Washington, DC 20590 or downloaded from FRA's Office of Safety Analysis Web site at *http://safetydata.fra.dot.gov/officeofsafety/,* and click on "Click Here for Changes in Railroad Accident/Incident Recordkeeping and Reporting."

* * * * *

(j) *Form FRA F 6180.107—Alternative Record for Illnesses Claimed to be Work-Related.* Form FRA F 6180.107 or an alternative railroad-designed record may be used by a railroad in lieu of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" (described in paragraph (h) of this section), to record each illness claimed by an employee to be work-related that is reported to the railroad for which there is insufficient information for the railroad to determine whether the illness is work-related. This record shall be completed and retained in accordance with the requirements set forth in § 225.25 and § 225.27.

(k) *Form FRA F 6180.150—Highway User Injury Inquiry Form.*—Form FRA F 6180.150 shall be sent to every potentially injured highway user, or their representative, involved in a highway-rail grade crossing accident/incident. If a highway user died as a result of the highway-rail grade crossing accident/incident, a railroad must not send this form to any person. The railroad shall hand deliver or send by first class mail the letter within a reasonable time period following the date of the highway-rail grade crossing accident/incident. The form shall be sent along with a cover letter and a prepaid preaddressed return envelope. The form and cover letter shall be completed in accordance with instructions contained in the current "FRA Guide for Preparing Accident/Incident Reports." Any response from a highway user is voluntary and not mandatory. A railroad shall use any response from a highway user to comply with part 225's accident/incident reporting and recording requirements.

■ 15. Section 225.25 is amended by revising paragraphs (a), (b)(6) and (b)(28), (e)(28), and (i), and by adding paragraph (j) to read as follows:

§ 225.25 Recordkeeping.

(a) Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees for each railroad establishment where such employees report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) * * *

(6) Employee identification number;

* * * * *

(28) The railroad shall identify the preparer's name; title; telephone number with area code; and the date the record was initially signed/completed.

* * * * *

(e) * * *

(28) Date the record was initially signed/completed.

* * * * *

(i) Claimed Occupational Illnesses. (1) Each railroad may maintain a Form FRA F 6180.107, "Alternative Records for Illnesses Claimed to be Work-Related," or an alternate railroad-designed record as described in paragraph (j) of this section, in place of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," only for those claimed occupational illnesses for which the railroad has not received information sufficient to determine whether the occupational illness is work-related.

(2) Each railroad shall enter each illness claimed to be work-related on the appropriate record, as required by paragraph (i)(1) of this section, as early as practicable, but no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness.

(3) When a railroad does not receive information sufficient to determine whether a claimed occupational illness case is accountable or reportable, the railroad shall make a good faith effort to obtain the necessary information by December 1 of the next calendar year.

(4) Within 15 calendar days of receiving additional information regarding a claimed occupational illness case, each railroad shall document receipt of the information, including date received and type of document/information received, in narrative block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related."

(5) Within 45 calendar days of receiving additional information regarding a claimed occupational illness, each railroad shall re-evaluate the claimed occupational illness to determine work-relatedness, taking into account the new information, and document any findings resulting from the re-evaluation in narrative block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related."

(6) For any claimed occupational illness case determined to be accountable or reportable, each railroad shall:

(i) Complete a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" or alternative railroad-designed form within seven days of making such determination;

(ii) Retain the Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," in accordance with § 225.27; and

(iii) Report the occupational illness, as applicable, in accordance with § 225.11.

(7) For any claimed occupational illness case determined not to be accountable or reportable, each railroad shall include the following information in narrative block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" or alternative railroad-designed form:

(i) Why the case does not meet reporting criteria;

(ii) The basis upon which the railroad made this determination; and

(iii) The most authoritative information the railroad relied upon to make the determination.

(8) Although Form FRA 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" (or the alternate railroad-designed form), may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

(j) An alternative railroad-designed record may be used in lieu of the Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related." Any such alternative record shall contain all of the information required on the Form FRA F 6180.107. Although this information may be displayed in a different order from that on Form FRA F 6180.107, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for all of the railroad's reporting establishments. Railroads may list additional information in the alternative record beyond the information required on Form FRA F 6180.107. The alternative record shall contain, at a minimum, the following information:

(1) Name of Reporting Railroad;

(2) Case/Incident Number;

(3) Employee's Name (first, middle, last);

(4) Employee's Date of Birth (mm/dd/yy);

(5) Employee's Gender;

(6) Employee Identification Number;

(7) Date Employee was Hired (mm/dd/yy);

(8) Employee's Home Address (include street address, city, State and Zip code);

(9) Employee's Home Telephone Number (with area code);

(10) Name of Facility Where Railroad Employee Normally Reports to Work;

(11) Location, or Last Know Facility, Where Employee Reports to Work;

(12) Job Title of Railroad Employee;

(13) Department to Which Employee is Assigned;

(14) Date on Which Employee or Representative Notified Company Personnel of Condition (mm/dd/yy);

(15) Name of Railroad Official Notified;

(16) Title of Railroad Official Notified;

(17) Nature of Claimed Illness;

(18) Supporting Documentation;

(19) Custodian of Documents (Name, Title, and Address);

(20) Location of Supporting Documentation;

(21) Narrative;

(22) Preparer's Name;

(23) Preparer's Title;

(24) Preparer's Telephone Number (with area code); and

(25) Date the record was initially signed/completed (mm/dd/yy).

■ 16. Section 225.27 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 225.27 Retention of records.

(a)(1) *Five-year retention period.* Each railroad shall retain the following forms for at least five years after the end of the calendar year to which they relate:

(i) Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record;"

(ii) Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related;"

(iii) Monthly List of Injuries and Illnesses required by § 225.25; and

(iv) Form FRA F 6180.150, "Highway User Injury Inquiry Form."

(2) *Two-year retention period.* Each railroad shall retain the following forms for at least two years after the end of the calendar year to which they relate:

(i) Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record," required by § 225.25;

(ii) The Employee Human Factor Attachments (Form FRA F 6180.81, "Employee Human Factor Attachment") required by § 225.12, that have been received by the railroad;

(iii) The written notices to employees required by § 225.12 (Part I of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), that have been received by the railroad; and

(iv) The Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) (Part II of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), that have been received by the railroad.

* * * * *

(c) Each railroad shall retain the original hard copy of each completed and signed Form FRA F 6180.55, "Railroad Injury and Illness Summary," that the railroad submits to FRA on optical media (CD–ROM) or electronically via the Internet to *aireports@frasafety.net* for at least five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA electronically via the internet, the railroad must also retain a hard copy print out of FRA's electronic notice acknowledging receipt of the railroad's submission for a period of five years after the calendar year to which the report acknowledged relates.

(d) Railroads may retain accident/incident records as required by paragraphs (a) and (b) of this section in hard copy format or in electronic format. After October 31, 2011,

accident/incident records, retained by railroads as required by paragraphs (a) and (b) of this section, in hard copy format or electronic format are subject to the following system requirements:

(1) *Design Requirements.* Any electronic record keeping system used to retain a record required to be retained by this part shall meet the following design parameters:

(i) The electronic record system shall be designed such that the integrity of each record is retained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(ii) The electronic system shall ensure that each record cannot be modified, or replaced, once the record is submitted to FRA;

(iii) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall uniquely identify the person making the amendment and the date the amendment was made;

(iv) The electronic system shall provide for the maintenance of reports as originally submitted to FRA without corruption or loss of data; and

(v) Policies and procedures must be in place to prevent persons from altering electronic records, or otherwise interfering with the electronic system.

(2) *Accessibility and availability.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following access and availability parameters:

(i) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this part shall be provided to any representative of the FRA or of a State agency participating in investigative and/or surveillance activities under part 212 of this chapter or any other authorized representative for inspection and photocopying upon request in accordance with § 225.35; and

(ii) Paper copies provided to FRA or of a State agency participating in investigative and/or surveillance activities under part 212 of this chapter or any other authorized representative shall be produced in a readable text format and all data shall be identified by narrative descriptions (*e.g.,* "accident/incident number," "number of days away from work," "date of occurrence," *etc.*).

■ 17. Section 225.33 is amended by revising paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name(s), title(s) and address(es) of the custodian(s) of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

■ 18. Section 225.37 is revised to read as follows:

§ 225.37 Optical media transfer and electronic submission.

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of optical media (CD–ROM), or by means of electronic submission via the Internet:

(1) The Rail Equipment Accident/Incident Report (Form FRA F 6180.54);

(2) The Railroad Injury and Illness Summary (Form FRA F 6180.55);

(3) The Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a);

(4) The Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57); and

(5) The Employee Human Factor Attachment (Form FRA F 6180.81) (the Employee Human Factor Attachment must be in .pdf or .jpg format only).

(b) Each railroad utilizing the optical media option shall submit to FRA a computer CD–ROM containing the following:

(1) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and

(2) The completed accident/incident report submissions.

(c) (1) Each railroad utilizing the electronic submission via the Internet option shall submit to FRA at *aireports@frasafety.net:*

(i) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and

(ii) The completed accident/incident report submissions.

(2) FRA will provide to the railroad an electronic notice acknowledging receipt of submissions filed electronically via the Internet.

(d) Each railroad employing either the optical media or electronic submission via the Internet option, shall submit its monthly reporting data for the reports identified in paragraph (a) of this section in a year-to-date file format as described in the FRA Guide.

(e) A railroad choosing to use optical media or electronic submission via the internet must use one of the approved formats specified in the Companion Guide. FRA will reject submissions that do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing to provide timely submissions of required reports as required by § 225.11.

■ 19. Section 225.41 is added to read as follows:

§ 225.41 Suicide Data.

FRA does not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act.

■ 20. Appendix A to part 225 is revised to read as follows:

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful Violation
225.6: Failure to comply with consolidated reporting requirements	$2,500	$5,000
225.9:		
(1) Failure to report	2,500	5,000
(2) Failure to immediately report	1,000	2,000
(3) Failure to accurately report	1,000	2,000

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful Violation
225.11:		
(1) Failure to report accident/incident	2,500	5,000
(a) Highway-rail grade crossing.		
(b) Rail Equipment.		
(c) Death, Injury, or occupational illness.		
(2) Report is incomplete	1,000	2,000
225.12: Failure to file Railroad Employee Human Factor form	2,500	5,000
(a) Failure to file Railroad Employee Human Factor Attachment correctly:		
(1) Employee identified	2,500	5,000
(2) No employee identified	1,000	2,000
(b)		
(1) Failure to notify employee properly	2,500	5,000
(2) Notification of employee not involved in accident	2,500	5,000
(c) Failure of employing railroad to provide requested information properly	1,000	2,000
(d)		
(1) Failure to revise report	2,500	5,000
(2) Failure to notify after late identification	2,500	5,000
(f) Submission of notice if employee dies as result of the reported accident	2,500	5,000
(g) Willfully false accident statement by employee	.....	5,000
225.13:		
(1) Failure to Late reports	2,500	5,000
(2) Failure to Review Employee Statement	2,500	5,000
(3) Failure to Amend Report	1,000	2,000
225.18: Alcohol or drug involvement	2,500	5,000
225.23: Joint operations	([1])	([1])
225.25:		
(1) Recordkeeping	2,500	5,000
(2) Failure to post list	1,000	2,000
(3) Posting Prohibited Information	1,000	2,000
(4) Missing fields	1,000	2,000
225.27:		
(1) Failure to retain records	1,000	2,000
(2) Failure to retain electronic receipt	1,000	2,000
(3) Failure to comply with electronic recordkeeping requirements	1,000	2,000
(4) Failure to provide access to records	1,000	2,000
225.33:		
(1) Failure to adopt Internal Control Plan or more than two missing/outdated/incorrect components	2,500	5,000
(2) Internal Control Plan with less than three missing/outdated/incorrect components	1,000	2,000
(3) Failure to comply with Internal Control Plan	2,500	5,000
(4) Failure to comply with the intimidation/harassment policy in Internal Control Plan	2,500	5,000
(5) Failure to comply with requirements associated with Form FRA F 6180.150	2,500	5,000
225.35: Access to records and reports	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

[2] The penalty schedule uses section numbers from 49 CFR part 225. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Issued in Washington, DC, on October 6, 2010.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2010–27641 Filed 11–8–10; 8:45 am]

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Federal Register

Tuesday,
November 9, 2010

Part III

Equal Employment Opportunity Commission

29 CFR Part 1635
Regulations Under the Genetic Information Nondiscrimination Act of 2008; Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1635

RIN [3046—AA84]

Regulations Under the Genetic Information Nondiscrimination Act of 2008

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC" or "Commission") is issuing a final rule to implement Title II of the Genetic Information Nondiscrimination Act of 2008 ("GINA"). Congress enacted Title II of GINA to protect job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. Title II of GINA requires the EEOC to issue implementing regulations. The Commission issued a proposed rule in the **Federal Register** on March 2, 2009, for a sixty-day notice and comment period that ended on May 1, 2009. After consideration of the public comments, the Commission has revised portions of both the final rule and the preamble.

DATES: Effective January 10, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, or Kerry E. Leibig, Senior Attorney Advisor, at (202) 663–4638 (voice) or (202) 663–7026 (TTY). (These are not toll free numbers.) This rule also is available in the following formats: large print, Braille, audio tape, and electronic file on computer disk. Requests for this rule in an alternative format should be made to the Publications Information Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

On May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act of 2008 ("GINA"), Public Law 110–233, 122 Stat. 881, codified at 42 U.S.C. 2000ff *et seq.,* into law. Congress enacted GINA in recognition of, among many achievements in the field of genetics, the decoding of the human genome and the creation and increased use of genomic medicine. As Congress noted, "New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment." GINA Section 2(1), 42 U.S.C. 2000ff, note.

Experts predict that the twenty-first century will see tremendous strides in the new field of genomic medicine, bringing it into mainstream medical practice. The National Human Genome Research Institute (NHGRI), the institute within the National Institutes of Health responsible for the mapping of the human genome, notes that "by identifying the genetic factors associated with disease, researchers may be able to design more effective drugs; to prescribe the best treatment for each patient; to identify and monitor individuals at high risk from disease; and to avoid adverse drug reactions." NHGRI, The Future of Genomic Medicine: Policy Implications for Research and Medicine (Bethesda, Md. Nov. 16, 2005), *available at http://www.genome.gov/17516574* (last visited July 7, 2010).

Many genetic tests now exist that can inform individuals whether they may be at risk for developing a specific disease or disorder. But just as the number of genetic tests increases, so do the concerns of the general public about whether they may be at risk of losing access to health coverage or employment if insurers or employers have their genetic information. Congress enacted GINA to address these concerns, by prohibiting discrimination based on genetic information and restricting acquisition and disclosure of such information, so that the general public would not fear adverse employment- or health coverage-related consequences for having a genetic test or participating in research studies that examine genetic information. Scientific advances require significant cooperation and participation from members of the general public. In the absence of such participation, geneticists and other scientists would be hampered in their research, and efforts to develop new medicines and treatments for genetic diseases and disorders would be slowed or stymied.

GINA Title I's health coverage provisions apply to group health plans sponsored by private employers, unions, and state and local government employers; issuers in the group and individual health insurance markets; and issuers of Medicare supplemental (Medigap) insurance.[1] These Title I provisions generally prohibit discrimination in group premiums based on genetic information and the use of genetic information as a basis for determining eligibility or setting premiums in the individual and Medigap insurance markets, and place limitations on genetic testing and the collection of genetic information in group health plan coverage, the individual insurance market, and the Medigap insurance market. Title I also requires the Secretary of Health and Human Services to revise the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HHS has published a notice of proposed rulemaking that proposes to clarify that genetic information is health information, and to prohibit group health plans, health insurance issuers (including HMOs), issuers of Medicare supplemental policies, and all other health plans covered under the HIPAA privacy regulations from using or disclosing genetic information for underwriting purposes.

Title II of GINA prohibits use of genetic information in the employment context, restricts employers and other entities covered by Title II from requesting, requiring, or purchasing genetic information, and strictly limits such entities from disclosing genetic information. The law incorporates by reference many of the familiar definitions, remedies, and procedures from Title VII of the Civil Rights Act of 1964, as amended, and other statutes protecting federal, state, and Congressional employees from discrimination.[2]

Background

The Commission published a proposed rule to implement Title II of GINA on March 2, 2009, and asked for public comment on the proposed rule, the discussion in the preamble, and other Title II issues not addressed in either document. *See* 74 FR 9056 (March 2, 2009). Several days earlier, on February 25, 2009, the Commission held a public meeting to announce its approval of the proposed rule at which invited panelists spoke about the impact of genetic information discrimination in the workplace (transcript available at *http://www.eeoc.gov/eeoc/meetings/2-25-09/index.cfm*). Although they had not had an opportunity to review the

[1] This regulation does not interpret the requirements of GINA Title I relating to genetic nondiscrimination in health coverage. Those requirements are administered by the Departments of Health and Human Services, Labor, and the Treasury.

[2] Prior to November 21, 2009, Executive Order 13145 prohibited federal executive branch agencies from discriminating against applicants and employees on the basis of genetic information and limited access to and use of genetic information. Since its effective date in November 2009, GINA has protected federal employees from genetic discrimination.

proposed rule, commenters at the public meeting did express their views on issues they believed should be addressed in EEOC's regulation to effectuate Title II's purposes.

The Commission received 43 comments from individuals, from groups representing individuals, and from organizations representing employers and professionals in response to the proposed rule. Most of those who participated in the February 25, 2009 public meeting submitted written comments after reviewing the proposed rule that were consistent with their public testimony. Further, on March 26, 2010, President Obama appointed to the Commission by way of recess appointments the Chair and two new Commissioners. These new members of the Commission (and others who were previously serving on the Commission) met with a number of stakeholders who had submitted comments to the record. Records of these meetings are included in the rulemaking docket.

In developing this regulation, the Commission closely followed the terms of the statute. The Commission's goal is to implement the various provisions of Title II consistent with Congress's intent, to provide some additional clarification of those provisions, and to explain more fully those sections where Congress incorporated by reference provisions from other statutes. For example, where GINA section 201(2)(A)(i) defines *employee* by reference to Title VII of the Civil Rights Act of 1964 and other statutes, this regulation expands on that reference by importing language from these statutes so that those using the final regulation need not refer to other sources when determining the scope of GINA's coverage.[3]

The Commission also recognizes that Title II of GINA includes terms that are outside the areas of its expertise. In particular, the definition of "genetic test" refers to "analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes." None of these terms is common to employment discrimination law. For this reason, Commission staff sought and obtained technical assistance from NHGRI, the institute within the National Institutes of Health responsible for decoding the human genome and for developing technologies applicable to the study of the genetic components of complex disorders.

The Commission also coordinated with the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury, which have responsibility for issuing regulations applicable to GINA Title I. In particular, DOL (the Employee Benefits Security Administration), HHS (the Centers for Medicare & Medicaid Services), and the Treasury (the Internal Revenue Service) are responsible for issuing regulations applicable to GINA sections 101–103.[4] These agencies issued interim final rules on sections 101 through 103 of GINA on October 7, 2009. *See* 74 FR 51664. The HHS Office for Civil Rights is responsible for issuing the regulations applicable to GINA section 105 and issued a proposed rule on October 7, 2009 at 74 FR 51698. Among the various Title II provisions are several that address the relationship between Title I and Title II, and the relationship between Title II and several statutes that the Departments enforce, including the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act, the Internal Revenue Code, and HIPAA.

Section-by-Section Analysis of the Regulation

Section 1635.1 Purpose

In this section, the Commission sets forth the general purposes of GINA. The language in this section of the final rule has been modified slightly in response to several comments that disagreed with the characterization of Title II as prohibiting the "deliberate acquisition" of genetic information. *See* Comments of the American Civil Liberties Union (ACLU), Coalition for Genetic Fairness (CGF), Genetic Alliance, and the Genetics and Public Policy Center in collaboration with Jeremy Gruber (GPPC). These organizations noted that the term "deliberate acquisition" suggested that a covered entity must have a specific intent to acquire genetic information in order to violate the law. According to these commenters, a covered entity violates GINA by engaging in acts that present a heightened risk of acquiring genetic information, even without a specific intention to do so, such as when they fail to inform an individual from whom they have requested documentation about a manifested disease or disorder not to provide genetic information or when they access sources of information (*e.g.,* certain types of databases, Web sites, or social networking sites) that are likely to contain genetic information about individuals.

For reasons more fully set forth in the preamble's discussion of 1635.8(a), (b)(1) and (4), the Commission agrees that a covered entity may violate GINA without a specific intent to acquire genetic information. For that reason, the Commission has removed the reference to "deliberate acquisition" of genetic information in 1635.1. We likewise recognize that not every acquisition of genetic information violates GINA. Accordingly, the section now simply indicates that Title II of GINA restricts requesting, requiring, or purchasing genetic information. The rest of the language of 1635.1 concerning GINA's prohibition on the use of genetic information in employment decision-making, the requirement that genetic information be kept confidential (which includes maintaining written genetic information that exists in paper or electronic form as a confidential medical record), and the limitations on disclosure of genetic information is the same as the language in the proposed rule.

We have also modified this section to include a point made only in the preamble to the proposed rule. A new subparagraph, 1635.1(b), clarifies that the final rule does not apply to actions of a covered entity that do not pertain to an individual's status as an employee, member of a labor organization, or participant in an apprenticeship program. The final rule offers two examples to illustrate this point. Title II of GINA would not apply to a medical examination of an individual conducted for the purpose of diagnosis and treatment unrelated to employment, which is conducted by a health care professional in the hospital or other health care facility where the individual is an employee. Similarly, Title II would not govern the actions of a covered entity carried out in its capacity as a law enforcement agency investigating criminal conduct, even where the subject of the investigation is also an employee of the covered entity.

Section 1635.2 Definitions—General

The Commission reiterates the definitions set forth in GINA section 201, many of which come from Title VII of the Civil Rights Act of 1964. However, where the statute merely incorporates by reference different categories of covered employees, the regulation describes more fully the employees GINA protects. We have retained without change language from the proposed rule which said that the term "employee" also includes former

[3] Unless otherwise noted, use of the term "GINA" means "Title II of GINA." When needed for clarity, the preamble will refer to Title I of GINA or Title II of GINA.

[4] The National Association of Insurance Commissioners issued conforming model regulations relating to section 104 on September 24, 2008, published in the **Federal Register** on April 24, 2009 at 74 FR 18808.

employees. We received two comments raising concerns with this inclusion. The Illinois Credit Union League (ICUL) suggested that there should be a temporal qualifier on the term "former employee," while a comment jointly submitted by the U.S. Chamber of Commerce, the Society for Human Resource Management and a number of other employer representatives (Chamber/SHRM) objected that our citation to *Robinson* v. *Shell Oil Co.,* 519 U.S. 337, 346 (1997), did not support the proposition that the term "employee" also includes former employees. Chamber/SHRM contends that *Robinson* decided only that the term "employee" as used in Title VII's anti-retaliation provision, 42 U.S.C. 2000e–3(a), applied to former employees, not whether "employee" as used in section 701(f) of Title VII applied to former employees. In *Robinson,* the Supreme Court observed that the definition of "employee" in section 701(f), which is the basis for the term "employee" in GINA, "lacks any temporal qualifier and is consistent with either current or past employment." *Robinson,* 519 U.S. at 342. The Commission has read *Robinson* as supporting its well-established position that "[f]ormer employees are protected by the EEO statutes when they are subjected to discrimination arising from the former employment relationship." *See* EEOC's Compliance Manual Section 2 on *Threshold Issues* at § 2–III.A.2. & n. 79 (available at *http://www.eeoc.gov/policy/docs/threshold.html#2-III-A-2*) (citing to *Robinson*). An example under GINA would be a situation in which a former employer disclosed to a prospective employer an individual's genetic information. Accordingly, the final regulation makes clear that the term "employee" includes an applicant and a former employee.

The final regulation provides a concise explanation of the employers covered by GINA, rather than following the statute's example of providing citations to definitions of "employer" provided by other laws. For example, the final regulation explains that Indian tribes, as well as bona fide private clubs (other than labor organizations) that are exempt from taxation under section 501(c) of the Internal Revenue Code of 1986, are not employers, rather than merely referring to Title VII's exclusion of these groups from the definition of "employer." *See* 42 U.S.C. 2000e(b)(1) and (2).

One commenter asked that the final regulation state that there is no individual liability for violations of GINA. *See* Comment of TOC Management Services (TOC). As the statute makes clear, GINA's definition of "employer" includes employers as defined by Title VII at 42 U.S.C. 2000(e)b. Numerous courts have held that this definition was not intended to permit individual liability. *See Lane* v. *Lucent Tech., Inc.,* 388 F. Supp. 2d 590 (M.D.N.C. 2005) (citing cases from every circuit except the First Circuit rejecting individual liability); *see also, e.g., Mandell* v. *County of Suffolk,* 316 F.3d 368 (2d Cir. 2003); *Wathen* v. *General Elec.* Co., 115 F.3d 400 (6th Cir. 1997); *Cross* v. *Alabama,* 49 F.3d 1490 (11th Cir. 1995); *Grant* v. *Lone Star Co.,* 21 F.3d 649 (5th Cir. 1994). Therefore, it is not necessary to make this point in the regulation.

The final regulation includes a definition of "covered entity." It uses the term to refer to all entities subject to Title II of GINA: The different categories of GINA-covered employers (private sector, state and local government, Congressional employers, executive branch, federal/civil service), as well as employment agencies, labor organizations, and joint labor-management training and apprenticeship programs. By using the term "covered entity" to describe the requirements or prohibited practices applicable to all entities subject to Title II of GINA, the final regulation avoids some of the repetition found in sections 202–205 of the statute. This use of the term "covered entity" as a simplifying shorthand to aid in the readability of the final regulation is similar to EEOC's use of "covered entity" in the regulation implementing Title I of the Americans with Disabilities Act, 42 U.S.C. 12111 (ADA). One comment urged the Commission not to use the term "covered entity" because of possible confusion with the same term in HIPAA. *See* Comment of American Medical Association (AMA). We do not believe that use of the term "covered entity" in this regulation will cause confusion, as most of the entities subject to Title II are not HIPAA covered entities and those that are should be able to distinguish between their roles as HIPAA covered entities and as covered entities subject to Title II of GINA. We note that HIPAA covered entities do not appear to have experienced confusion from use of the term "covered entities" in Title I of the ADA, even though the ADA, like HIPAA, places limitations on the acquisition and disclosure of medical information.

The final regulation says that the term "covered entity" includes an "employing office." The term "employing office," referenced in sections 201 and 207 of GINA, is used in the Congressional Accountability Act, which protects employees in the legislative branch. *See* 2 U.S.C. 1301(9). Although the EEOC has no enforcement authority under the Congressional Accountability Act, as the only agency with authority to issue regulations under Title II of GINA, we believe that referencing that law in this final regulation appropriately puts employees in the legislative branch and covered employing offices on notice of their rights and responsibilities under GINA.

Section 1635.3 Definitions Specific to GINA

GINA includes six terms not found in any of the other employment discrimination statutes that the Commission enforces. This final regulation provides some additional guidance regarding these terms. One comment said that many of the definitions in the NPRM were too difficult to understand without scientific knowledge. *See* Comment of Federal Deposit Insurance Corporation (FDIC). As noted above, in developing these definitions, EEOC coordinated closely with NHGRI. We also were careful to track closely the language of Title II itself where possible to avoid any unintended consequences that might result from attempting to paraphrase or simplify scientifically technical language. However, we have added a number of examples to the regulation itself that will further clarify the meanings of some of these terms.

Section 1635.3(a) Family Member

The statute defines an individual's "family member" both by reference to ERISA section 701(f)(2) and as extending to the individual's fourth degree relatives. First, section 201(3)(a) of GINA states that family member is defined as "a dependent (as that term is used for purposes of section [701(f)(2) of ERISA])" of the individual.[5] For purposes of Title II, the Commission has determined that the dependents covered by Title II are limited to persons who are or become related to an individual

[5] The Commission's definition of "dependent" is solely for purposes of interpreting Title II of GINA, and is not relevant to interpreting the term "dependent" under Title I of GINA or under section 701(f)(2) of ERISA and the parallel provisions of the Public Health Service Act and the Internal Revenue Code. The Commission believes its interpretation of the term "family member," particularly the way in which GINA's reference to section 701(f)(2) of ERISA relates to that term, is consistent with the plain language of both section 701(f)(2) and Title II of GINA, furthers Congress's intent to prohibit genetic discrimination in the employment context, and provides covered entities with clear standards governing compliance with the law.

through marriage, birth, adoption, or placement for adoption.[6]

Groups who represent employers thought that persons who become dependents by adoption or placement for adoption should not be considered family members, because genetic information about them would not indicate whether an individual protected by GINA might acquire a disease or disorder. *See* Comments of Illinois Chamber of Commerce (ICC) and Chamber/SHRM. However, GINA's express reference to section 701(f)(2) of ERISA and section 701(f)(2)'s explicit reference to dependents by adoption or placement for adoption makes it absolutely clear that Congress intended to include such persons in GINA's definition of "family member." Moreover, the acquisition of information about the occurrence of a disease or disorder in an applicant's or employee's adopted child could certainly result in the type of discrimination GINA was intended to prohibit. For example, an employer might use information it obtains about the current health status of an adopted child to discriminate against an employee because of concerns over potential health care costs, including increased health insurance rates, associated with the family member's medical condition. *See* S. Rep. No. 110–48 at 28 (indicating that spouses and adopted children were included in the definition of family member for this exact reason).

Second, GINA includes as family members persons related from the first to the fourth degree of an individual. The degree of relationship reflects the average proportion of genes in common between two individuals. The GINA provisions thus include the individual's children, siblings, and parents (first degree), grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings (second degree), great-grandparents, great grandchildren, great uncles, great aunts, and first cousins (third degree), and great-great grandparents and first cousins once removed (the children of a first cousin) (fourth degree). The inclusion of half-siblings among second-degree relatives responds to a comment we received to the proposed rule which said that we had incorrectly listed half-siblings among first-degree relatives.[7] *See* Comment of GPPC.

The Commission declines, however, to expand the degree of relationship of family members beyond the fourth degree as one comment suggested we should do. *See* Comment of Members of the Personal Genetics Education Project (PGEP). Whether or not genetic information about an individual's relatives beyond the fourth degree of relationship has predictive value with respect to the individual, the language of the statute on which the regulation is patterned does not permit such an expansion of the definition of "family member." In fact, GINA's definition of "family member" is already broader than that term is understood in the practice of medicine. As discussed in the following section, a typical family medical history used for the purposes of diagnosis and treatment includes information about an individual's first-degree, second-degree, and third-degree relatives.

Section 1635.3(b) Family Medical History

The final regulation includes a definition of "family medical history" because it is a term used in the statute's discussion of prohibited employment practices, but it is not specifically defined by the statute. In the legislative history of GINA, Congress stated that the term "family medical history [should] be understood as it is used by medical professionals when treating or examining patients." S. Rep. No. 110–48, at 16. In particular, the Senate Report notes as follows:

> [T]he American Medical Association (AMA) has developed an adult family history form as a tool to aid the physician and patient to rule out a condition that may have developed later in life, which may or may not have been inherited. This form requests information about the patient's brothers, sisters, and their children, biological mother, the mother's brothers, sisters, and their children, maternal grandfather, maternal grandmother, biological father, the father's brothers, sisters, and their children, paternal grandfather and paternal grandmother. The committee expects that the use of "family history" in this bill will evolve with the medical profession and the tools it develops in this area.

Id. The Report further notes that "a family medical history could be used as a surrogate for a genetic trait," *id.,* and that the definition of "genetic information" had to include "family medical history" to prevent a covered entity from making decisions about an individual's health based on the existence of an inheritable disease of a family member. *See also id.* at 28 (reiterating the Title I discussion of family medical history in the Report section addressing Title II).[8]

Citing this legislative history, some employer groups urged that we include the word "inheritable" before the words "disease or disorder" in the regulation's definition of "family medical history," arguing that Congress did not intend that GINA apply to conditions such as the common cold or the flu. *See* Comments of Chamber/SHRM and ICC. For three reasons, the Commission has decided not to make this change in the final rule. First, the regulation's language is consistent with the plain language of the statute, which also does not include the word "inheritable." Second, given the rapidly-developing field of genetics, we believe that requiring Title II covered entities or EEOC investigators to determine whether a disease or disorder in family members of an individual is "inheritable" or has a genetic basis would present significant compliance and enforcement problems. Finally, the Commission doubts that questions about whether a family member has a cold, the flu, or similar conditions will often result in charges being filed under GINA.

One commenter also suggested that we clarify that medical information obtained from one employee will not be considered family medical history of a family member who also works for the employer. *See* Comment of Chamber/SHRM. This commenter is apparently concerned that an employer will be liable for a violation of GINA if it requests information about a manifested disease or disorder of an employee whose family member also works for the employer. The Commission recognizes the problem that this commenter is trying to avoid, but does not agree with the proposed solution. We disagree that the first employee's medical information is not family medical history as to the second employee. An employer who learns that one employee has a manifested disease or disorder would be in possession of family medical history about a second employee who is a

[6] "Placement for adoption" or being placed for adoption means the assumption and retention of a legal obligation for total or partial support of a child by a person with whom the child has been placed in anticipation of the child's adoption. The child's placement for adoption with such person ends upon the termination of such legal obligation. *See* 29 CFR 2590.701–2 (the definitions for part 7 of ERISA)

[7] This approach is different from the approach taken in regulations implementing Title I of GINA. *See* GINA Title I regulations at 26 CFR 54.9802–3T(a)(2)(ii), 29 CFR 2590.702–1(a)(2)(ii) and 45 CFR 146.122(a)(2)(ii), which were published in the **Federal Register** on October 7, 2009 at 74 FR 51664.

[8] Since 2004 the U.S. Surgeon General's Family History Initiative has actively promoted the collection and use of family history information in clinical settings, including featuring a bilingual Web-based tool through which the user creates and organizes his/her family health history (*http://www.hhs.gov/familyhistory/*). GINA is not intended to limit the collection of family medical history by health care professionals for diagnostic or treatment purposes.

family member as defined by GINA. Likewise, an employer who learns the results of one employee's genetic test or learns that the employee has sought or received genetic services would possess genetic information about the employee who is a family member. (*See* discussion of the definition of "genetic information," below.) We do not think Congress could have intended that an employee not be protected from the discriminatory use or the disclosure of his or her genetic information just because the employer obtained it from a family member who was also an employee.

However, we do agree with the comment to the extent it seeks to limit liability under GINA for the acquisition of information about an employee's manifested condition. Although acquisition of information about manifested conditions is limited under other laws such as the ADA, it is permissible under GINA, even where an employee's family member works for the same employer. We have added a new subsection to § 1635.8 to clarify this point, and to make the related point that an employer will not violate GINA's provisions prohibiting the acquisition of an employee's genetic information when it requests genetic information or information about a manifested disease or disorder from an employee's family member to whom health or genetic services are being provided on a voluntary basis. (*See* discussion of § 1635.8(c), below.)

Section 1635.3(c) Genetic Information

GINA section 201(4) and the regulation define genetic information to include information from genetic tests, the genetic tests of family members, and family medical history. Genetic information also includes information about an individual's or family member's request for or receipt of genetic services. GINA section 209(b) and the regulation add that the term genetic information includes genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. *See* Comment of FDIC (noting that the preamble to the proposed rule cited to the wrong section of GINA when discussing the genetic information of a fetus or embryo). The statute and regulation exclude from coverage information about an individual's or family member's age or gender. In response to a comment, and mindful that many employers routinely request such information on a voluntary basis to comply with their EEO obligations, the final rule also says that information about race and ethnicity that is not derived from a genetic test is not genetic information. *See* Comment of ACLU.

Section 1635.3(d) Genetic Monitoring

Genetic monitoring is defined in GINA section 201(5) as the "periodic examination of employees to evaluate acquired modifications to their genetic material * * * caused by the toxic substances they use or are exposed to in performing their jobs." The final regulation uses language similar to that found in the statute in defining the term. As more fully described in 1635.8(b)(5) and its accompanying preamble discussion, a covered entity may acquire genetic information as part of genetic monitoring that is either required by law or voluntarily undertaken, provided the entity complies strictly with certain conditions.

Section 1635.3(e) Genetic Services

The term "genetic services" is defined in GINA section 201(6). It includes genetic tests, genetic counseling, and genetic education. Making an employment decision based on knowledge that an individual has received genetic services violates GINA, even if the covered entity is unaware of the specific nature of the genetic services received or the specific information exchanged in the course of providing them.

A number of comments asked that the final rule offer additional examples of genetic services that emphasize the term's breadth, including genetic education before and after testing and preventive therapies that an individual might undergo in response to a genetic test to reduce or eliminate the risk of acquiring a condition in the future. *See* Comments of AMA, CGF, Genetic Alliance, and GPPC. We have not made any additions to the definition in the final regulation. The definition of genetic services provided in the proposed rule encompasses genetic education, whether it is offered before, after, or unrelated to genetic testing. Moreover, we have determined that the statutory definition of genetic services was not intended to encompass the types of clinical services mentioned by these commenters.

Section 1635.3(f) Genetic Test

GINA section 201(7) defines "genetic test" to mean the "analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes." Genetic tests are used to detect gene variants associated with a specific disease or condition. For example, tests to determine whether an individual carries the genetic variant evidencing a predisposition to breast cancer—whether the individual has the BRCA1 or BRCA2 variant—or to determine whether an individual has a genetic variant associated with hereditary nonpolyposis colorectal cancer are genetic tests. It is important to note, however, that the presence of a genetic variant relating to a predisposition to disease is not evidence of, and does not equate to, disease. Similarly, a positive test for a genetic variant as strongly penetrant as Huntington's Disease does not equate to the presence of the disease, even though development of the disease is almost inevitable.

The Commission invited comments on the scope of the term "genetic test." In response, we received comments generally agreeing with how the Commission characterized certain kinds of tests in the preamble and text of the proposed rule. Several comments asked that we place examples from the preamble to the proposed rule in the text of the regulation itself, and we have done so. *See* Comments of the Equal Employment Advisory Council (EEAC), CGF, Genetic Alliance, GPPC and TOC. Thus, the regulation says that tests for infectious and communicable diseases that may be transmitted through food handling, complete blood counts, cholesterol tests, and liver-function tests are not genetic tests. To the proposed rule's examples of genetic tests, we have added a number of others suggested by several commenters, including carrier screenings of adults to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, and fragile X syndrome in future offspring; amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus; newborn screening tests for conditions such as PKU, which may allow preventive treatment to begin before the disease manifests; DNA testing that reveals family relationships (e.g., paternity tests); and DNA testing that determines the presence of genetic markers associated with ancestry. *See* Comments of CGF, Genetic Alliance, and GPPC.

Two commenters requested that the preamble and regulation refrain from listing specific tests that are excluded from the definition of genetic test. One argued that the science of genetics is constantly developing and that it is therefore shortsighted to specify tests that are not genetic in nature. *See* Comment of National Counsel of EEOC Locals no. 216, American Federation of Government Employees, AFL–CIO

(AFGE). Although we acknowledge this concern, excluding illustrative examples of what does not meet this definition would only serve to confuse those attempting to understand the bounds of the law.

Another comment argued that while the excluded tests are not genetic tests, it is still important that the results of tests that are not genetic tests be kept confidential and not be used as a basis for discrimination. *See* Comment of Disability Rights Legal Center (DRLC). Concerns about the discriminatory use of medical tests that are not genetic are addressed by the ADA, which limits the use of medical examinations and prohibits the use of medical and non-medical tests that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from employment, unless the test is shown to be job-related for the position in question and consistent with business necessity. *See* 29 CFR 1630.10. Section 1635.11(a) of the final rule and the accompanying preamble discussion make it clear that Title II of GINA does not limit other laws, including the ADA, that protect individuals on the basis of disability.

The Title II definition of "genetic test" differs from the definition of this term in Title I. Specifically, the Title II definition does not have the express exclusion that Title I does for "an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved." GINA 101(d), 29 U.S.C. 1191b–(d)(7)(B). However, as explained below, the Commission borrowed from Title I's use of the term "manifest" in the definition of "genetic test" in formulating a definition of "manifested or manifestation."

Section 1635.3(g) Manifestation or Manifested

The final rule includes a definition of the term "manifestation or manifested" because sections 201(4)(A)(iii) and 210 use the terms. Specifically, GINA section 201(4)(A)(iii), defining "genetic information," refers to the "manifestation of a disease or disorder in family members" of an individual, and section 210, entitled "Medical information that is not genetic information," refers to a "manifested disease, disorder, or pathological condition."

The definition of "manifestation or manifested" was developed with the assistance of NHGRI. The proposed rule defined "manifestation or manifested" to mean, with respect to a disease, disorder, or pathological condition:

> that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this part, a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information or on the results of one or more genetic tests.

The final rule deletes the words "or on the results of one or more genetic tests," which are unnecessary, given that the term "genetic information" already includes the results of genetic tests. The definition of the term "manifested" is consistent both with the definition of genetic test found in Title I, which permits use of certain diagnostic tests in order to determine whether an individual has a current—or manifest—disease, disorder, or condition, *see* S. Rep. No. 110–48. at 16, and with the notion, discussed above in conjunction with the definition of genetic test (§ 1635.3(f)), that the mere presence of a genetic variant does not mean that an individual has an associated condition, disease, or disorder. The presence of a genetic variant alone does not constitute a diagnosis; other signs or symptoms must be present. This interpretation is consistent with current ERISA regulations which prohibit a group health plan, and a health insurance issuer offering group health insurance coverage, from imposing a preexisting condition exclusion relating to a condition based solely on genetic information. Thus, for example, a woman who has group health plan coverage and has the BRCA1 gene variant may not be subject to a preexisting condition exclusion merely because she has the variant. *Id.* Example at 29 CFR 2590.701–3(b)(6)(ii). However, if an individual is diagnosed with a condition, even if the condition relates to genetic information—for example, breast cancer stemming from the BRCA1 gene variant—the plan may impose a preexisting condition exclusion with respect to the condition as of the date the disease was diagnosed, subject to other HIPAA portability requirements. *See* 29 CFR 2590.701–3(b)(6)(i).

Similarly, Huntington's Disease (HD) is an example of a genetic disease that is not diagnosed solely through use of a genetic test; other signs and symptoms must be present. The presence of the genetic variant virtually guarantees the later development of disease, but the disease does not usually manifest until adulthood. Therefore, even when a genetic variant is 100 percent predictive for development of disease, the presence of the variant does not by itself equal diagnosis of the disease.

Two comments asked the Commission to delete from § 1635.3(g) the concept that a disease, disorder, or pathological condition is not manifested if it is based "principally on genetic information or on the results of one or more genetic tests." *See* Comments of America's Health Insurance Plans (AHIP) and Chamber/SHRM; *see also* Comments of EEAC and SBA (raising similar concern). Although the Commission has deleted reference to "the results of one or more genetic tests" as explained above, the final rule still includes the basic concept that a condition is not manifest if it is based principally on genetic information. We agree, however, that a clarification is needed to address what we believe to be the central concern of these commenters, i.e., that the language at issue extends the protections of GINA to people with manifested conditions when genetic information played a role in diagnosing them. We therefore note that where diagnosis of a disease, disorder, or pathological conditions depends on both the presence of signs and symptoms and genetic information, the disease, disorder, or pathological condition will be considered manifested. The fact that an individual has the diagnosed disease, disorder, or pathological condition will not be considered genetic information about the individual; nor will information about the signs or symptoms the individual has. Such information, however, is still subject to other laws regulating the acquisition and use of medical information, including Title I of the ADA. *See* 42 U.S.C. 12112(d). Moreover, information about any genetic test or family medical history used as part of the diagnosis of the disease, disorder, or pathological condition is genetic information subject to Title II of GINA and this regulation.

Several commenters requested that the final regulation clarify that the genetic information of an individual with a manifested disease is still protected under GINA, citing the example of an individual with breast cancer who undergoes a genetic test and learns that she tests positive for a BRCA mutation, which increases one's risk for developing ovarian cancer as well as breast cancer. *See* Comments of CGF, Genetic Alliance, and GPPC. These commenters requested that we make clear that discriminating against this individual due to the presence of the genetic variant is a violation of GINA despite the fact that she also has a

manifested disease caused by the variant. We note that § 1635.12(b) makes it clear that genetic information of an individual with a manifested disease is protected genetic information under GINA and that discriminating against someone based on this information is prohibited.

Section 1635.4 Prohibited Practices—In General

In describing the prohibited practices under GINA Title II, Congress adopted language similar to that used in Title VII and other equal employment statutes, evincing its intent to prohibit discrimination with respect to a wide range of covered entity practices, including hiring, promotion and demotion, seniority, discipline, termination, compensation, and the terms, conditions, and privileges of employment. In response to a comment, we further note that the broad language Congress adopted in describing the practices prohibited by Title II makes clear that claims of harassment on the basis of genetic information are cognizable. *See* Comment of Disability Rights Legal Center (DLRC). In separate GINA sections 203–205, the statute notes additional covered actions of employment agencies (failing or refusing to refer for employment), labor unions (excluding or expelling from membership), and training, retraining, and apprenticeship programs (denying admission to or employment in such programs).

Section 1635.5 Limiting, Segregating, and Classifying

The final regulation reiterates the statutory language barring actions by covered entities that may limit, segregate, or classify employees because of genetic information. For example, an employer could not reassign someone whom it learned had a family medical history of heart disease from a job it believed would be too stressful and might eventually lead to heart-related problems for the employee. This section also makes clear that although the language of the statute specifically prohibits actions that have the "purpose or effect" of limiting, segregating, or classifying individuals on the basis of genetic information, neither the statute nor the final regulation creates a cause of action for disparate impact. Section 208 of GINA specifically prohibits such actions, and establishes the Genetic Nondiscrimination Study Commission, to examine "the developing science of genetics" and recommend to Congress "whether to provide a disparate impact cause of action under this Act." The final regulation does not address the establishment of this Commission, which is scheduled to begin its work on May 21, 2014.

In response to a comment, we clarify that a covered entity will not be deemed to have violated § 1635.5 if it limits or restricts an employee's job duties based on genetic information because it was required to do so by a law or regulation mandating genetic monitoring such as regulations administered by the Occupational and Safety Health Administration (OSHA). *See* Comment of EEAC (requesting clarification of this point); *see also* 1635.8(b)(5) (concerning voluntary genetic monitoring and monitoring pursuant to state or federal law) and 1635.11(a) below (GINA does not limit the statutory or regulatory authority of OSHA, the Mine Safety and Health Administration or other workplace health and safety laws and regulations.)

Section 1635.6 Causing a Covered Entity To Discriminate

GINA sections 203(a)(3), 204(a)(3), and 205(a)(3) expressly bar employment agencies, labor organizations, and apprenticeship or other training programs from causing an employer to discriminate on the basis of genetic information. These sections recognize that employers engage in most of the employment-related activities that the Act reaches. Other covered entities, however, might engage in conduct that could cause an employer to discriminate. For example, an employment agency or union might share or attempt to share genetic information it obtained (whether legally or not) about a client or member with an employer. Such conduct would violate sections 203(a)(3) and 204(a)(3), regardless of the intent of the employment agency or union in sharing the information. *See* Comment of DLRC (requesting clarification on this point).

Although section 202 does not include a similar provision explicitly prohibiting an employer from causing another covered entity to discriminate, it is well settled under Title VII that the definition of employer includes employers' agents under common law agency principles. *See Vinson* v. *Meritor Savings Bank,* 477 U.S. 57, 72 (1986). Because GINA incorporates Title VII's definition of employer, including the application of common law agency principles, GINA would bar an employer from engaging in actions that would cause another covered entity acting as its agent to discriminate. For example, an employer that directed an employment agency to ask applicants for genetic information or told the employment agency not to send it candidates with a family medical history for certain conditions would violate GINA. An employment agency that acted pursuant to the employer's direction would be liable for violating GINA either directly, because the law applies to employment agencies, or as an agent of the employer. Similarly, an employer would violate GINA if it used a labor organization's hiring hall to obtain genetic information in making job referrals, and the labor union would be liable under GINA either directly or as the employer's agent. The final rule modifies the language of § 1635.6 of the proposed rule slightly so that it leaves no doubt that no GINA covered entity may cause another covered entity to discriminate on the basis of genetic information.

Section 1635.7 Retaliation

The final regulation reiterates the statutory prohibition against retaliation where an individual opposes any act made unlawful by GINA, files a charge of discrimination or assists another in doing so, or gives testimony in connection with a charge. Because Congress adopted in GINA the language of the anti-retaliation provision in Title VII of the Civil Rights Act of 1964, the Commission believes that Congress intended the standard for determining what constitutes retaliatory conduct under GINA to be the same as the standard under Title VII, as announced by the Supreme Court in *Burlington Northern & Santa Fe Ry.* v. *White,* 548 U.S. 53 (2006). In that case, the Court held that Title VII's anti-retaliation provision protects an individual from conduct, whether related to employment or not, that a reasonable person would have found "materially adverse," meaning that the action "well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Id.* at 57–58 (citations omitted).

Section 1635.8 Acquisition of Genetic Information

Each of the discrete GINA sections addressing the conduct of employers, employment agencies, labor organizations, and apprenticeship or other training programs includes a section prohibiting covered entities from requesting genetic information from applicants, employees, or other individuals; from requiring that applicants or employees provide genetic information; or from purchasing genetic information about an applicant or employee. Each section also includes the same five exceptions. Sections 202, covering employers, and 205, covering joint labor-management training and

apprenticeship programs, include a sixth exception. The proposed regulation addressed each of the exceptions, as does the final regulation. Covered entities are cautioned, however, that the use of genetic information to discriminate, no matter how that information may have been acquired, is prohibited.

Concerning the general prohibition on acquiring genetic information, two commenters noted that the regulatory language of 1635.8(a) did not track the statutory language in that it failed to indicate that the prohibition applies to the genetic information of family members of individuals, as well as to that of the individuals themselves. *See* Comment of the American Psychological Association (APA) and FDIC. Although we believe the substance of the regulatory language is correct, in that the genetic information of an individual includes the genetic information of that individual's family members, we agree that it would be best to follow the statutory language of this prohibition and have altered 1635.8(a) accordingly.

Another comment argued that a covered entity violates GINA's provisions prohibiting the acquisition of genetic information only when it undertakes the purposeful act of requesting, requiring, or purchasing genetic information. *See* Comment of Chamber/SHRM. It was improper, this comment reasoned, for the Commission to have included examples of "passive acquisition" in 1635.8(b)(1) (governing inadvertent acquisition of genetic information) and 1635.8(b)(4) (concerning acquisition of genetic information through sources that are commercially and publicly available).

However, other commenters read the prohibition on acquisition more broadly, noting their view that GINA restricts "deliberate acts that result in the acquisition of genetic information," not just purposefully requesting, requiring, or purchasing genetic information. *See* Comments of ACLU, CGF, Genetic Alliance, and GPPC. A similar construction of the acquisition prohibition underlay suggestions for changes to the portion of the rule concerning inadvertent acquisition of genetic information. Several commenters said that covered entities that make inquiries or engage in actions reasonably likely to result in the acquisition of genetic information should not be able to avail themselves of the exceptions in 1635.8(b)(1) or 1635.8(b)(4). Thus, for example, as discussed below, commenters asked that the Commission require that covered entities requesting information about an individual's current health status (e.g., for the purpose of making a reasonable accommodation) affirmatively warn the person providing the information not to include genetic information, since acquisition of genetic information in the form of family medical history would be likely in the absence of a warning. *See* Comments of ACLU, the American Medical Association (AMA), CGF, Genetic Alliance, GPPC, and the Leadership Conference on Civil Rights (LCCR). Similarly, most of these commenters said that the exception for acquisition of genetic information from sources that are commercially and publicly available should not apply to sources that are likely to, or present a "heightened risk" of, containing genetic information, and one commenter specifically asked that the final rule prohibit Internet searches that include an individual's name and a particular genetic marker. *See* Comments of LCCR.

The Commission acknowledges all these concerns and, for purposes of GINA Title II, has added language to 1635.8(a) as follows: "'Request' includes conducting an Internet search on an individual in a way that is likely to result in a covered entity obtaining genetic information; actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and making requests for information about an individual's current health status in a way that is likely to result in a covered entity obtaining genetic information."

We think it is equally clear that Congress intended certain "passive acquisitions" of genetic information to be exceptions to the rule prohibiting acquisition, rather than being wholly outside the prohibition. The examples, particularly those in § 1635.8(b)(1) and (4), are similar to the so-called "water cooler" example that Congress thought should be an exception to the general prohibition against requesting, requiring, or purchasing genetic information. *See* S. Rep. No. 110–48, at 29 ("[t]he committee recognizes that conversations among coworkers about the health of a family member are common and intends to prevent such normal interaction from becoming the basis of litigation"). We therefore retain the examples offered in the preamble to the proposed rule, as we believe that they provide useful guidance. *See* Comment of TOC (encouraging EEOC to retain examples).

We now turn to a discussion of the specific exceptions described in 1635.8(b). We received a number of comments concerning these exceptions, particularly in response to 1635.8(b)(1), (2) and (4).

Inadvertently Requesting or Requiring Genetic Information: First, as noted in the proposed rule, a covered entity that "inadvertently requests or requires family medical history" from an individual does not violate GINA. Congress intended this exception to address what it called the "'water cooler problem' in which an employer unwittingly receives otherwise prohibited genetic information in the form of family medical history through casual conversations with an employee" or by overhearing conversations among co-workers. S. Rep. No. 110–48, at 29; *see also* H.R. Comm. on Education and Labor, Genetic Information Nondiscrimination Act of 2007, H.R. Rep. No. 110–28 part I, 37–38 (2008) (H.R. Rep. No. 110–28, part I). Congress did not want casual conversation among co-workers regarding health to trigger federal litigation whenever someone mentioned something that might constitute protected family medical history. The Commission's proposed regulation therefore noted that a covered entity inadvertently acquires family medical history where a manager or supervisor overhears a conversation among co-workers that includes information about family medical history (e.g., a conversation in which one employee tells another that her father has Alzheimer's disease).

Although the language of this exception in GINA specifically refers to family medical history, the Commission believes that it is consistent with Congress's intent to extend the exception to any genetic information that an employer inadvertently acquires. The Commission does not believe, for example, that Congress intended that an employer would be liable for the acquisition of genetic information because it overhears a conversation in which one employee tells another that her mother had a genetic test to determine whether she was at increased risk of getting breast cancer. If the exception were read to cover only family medical history, this would violate GINA, even though it occurred inadvertently, because information that a family member has had a genetic test, while genetic information, is not information about the occurrence of a disease or disorder in a family member. Although we received numerous comments in regard to 1635.8(b)(1), no commenter expressed disagreement with the decision to extend the exception to all genetic information that a covered entity inadvertently acquires. *See, e.g.,* Comment of GPPC (discussing the need for a restrictive view of this

exception, but expressing agreement that it was intended to extend to all genetic information and not just family medical history).

The Commission also understands this exception to apply in any situation in which an employer might inadvertently acquire genetic information, not just to situations involving conversations between co-workers that are overheard. The proposed regulation provided an illustrative list of examples, reiterated here, where we believe Congress intended the exception to apply. Thus, for example, the exception applies when the covered entity, acting through a supervisor or other official, receives family medical history directly from an individual following a general inquiry about the individual's health (*e.g.,* "How are you?" or "Did they catch it early?" asked of an employee who was just diagnosed with cancer) or a question as to whether the individual has a manifested condition.[9] Similarly, a casual question between colleagues, or between a supervisor and subordinate, concerning the general well-being of a family member would not violate GINA (*e.g.,* "How's your son feeling today?", "Did they catch it early?" asked of an employee whose family member was just diagnosed with cancer, or "Will your daughter be OK?"), nor would the receipt of genetic information that was not solicited or sought by the employer (*e.g.,* where a manager or supervisor receives an unsolicited email from a co-worker about the health of an employee's family member).

A number of commenters raised concerns about the exact parameters of this exception. Civil rights groups and organizations promoting genetic research asked that the EEOC clarify that pointed questions or other attempts to gather genetic information by, for example, intentionally eavesdropping on private conversations or asking highly specific follow-up questions when an employee mentions that a family member is ill, do not fall within the bounds of this exception. *See* Comments of ACLU, CGF, the Genetic Alliance, GPPC, and LCCR. The Illinois Chamber of Commerce (ICC) requested that the regulation specifically state that there is no violation of the prohibition against acquisition unless the employer purposefully acquires genetic information and both ICC and Chamber/SHRM requested that it be made clear that the examples provided are not exhaustive. *See* Comments of ICC and Chamber/SHRM. The FDIC made a similar point when it requested that the rule state that this exception applies to questions by an employer "not likely to elicit genetic information" but does not apply to questions "likely to elicit genetic information." *See* Comment of FDIC.

These comments make apparent the need for greater clarity concerning this exception. We include in the final regulation itself the examples from the preamble to the proposed rule that illustrate how this exception applies and provide an additional example both here and in the final regulation at 1635.8(b)(1)(ii)(B). The additional example is as follows: A covered entity that inadvertently acquires genetic information about someone's family member in response to a general question about the family member's health may not then ask follow-up questions that are probing in nature, such as whether other family members also have the condition, or whether the individual has been tested for the condition.

We also include an additional example here and in the final regulation at 1635.8(b)(1)(ii)(D) to clarify that the inadvertent acquisition exception applies not only to interactions within the workplace during which a covered entity unwittingly receives genetic information, but also to interactions that take place in the "virtual" world, *i.e.,* through a social media platform from which a covered entity unwittingly receives genetic information. In other words, this exception applies where a manager, supervisor, union representative, or employment agency representative inadvertently learns genetic information from a social media platform which he or she was given permission to access by the creator of the profile at issue (*e.g.,* where a supervisor and employee are connected on a social networking site and the employee provides family medical history on his page).

We further note that the examples provided in this preamble and the regulation are non-exhaustive and that other situations in which a covered entity inadvertently acquires genetic information are covered by this exception as long as the requirements provided in the regulation are met.

We received a significant number of comments expressing concern about GINA's application to a covered entity's request for medical information that results in the receipt of genetic information that was not requested. Civil rights groups, groups promoting genetic research, and others argued that covered entities will obtain a great deal of genetic information through general requests for medical information if they are not required to affirmatively indicate that genetic information should not be provided. *See* Comments of the ACLU, AMA, CGF, Genetic Alliance, GPPC, and LCCR. *See also* Comments of Burton Blatt Institute (noting that the exception's application to acquisition through legitimate medical information requests should be limited because doctors will not know to exclude genetic information) and World Privacy Forum (requesting further limitations on this exception). Employer groups raised the related point that human resource offices do not have control over what is received from health care providers in response to requests for medical information and that covered entities should not be subjected to liability if health care providers provide genetic information that was not requested. *See* Comments of Chamber/SHRM, EEAC and the International Public Management Association for Human Resources, the League of Minnesota Cities and the International Municipal Lawyers Association (IPMA/IMLA).

In response to these comments and to facilitate compliance with the law, we have added language to the final rule indicating that when a covered entity warns anyone from whom it requests health-related information not to provide genetic information, the covered entity may take advantage of the exception in 1635.8(b)(1) if it nevertheless receives genetic information. This "safe harbor" in 1635.8(b)(1)(i)(B) provides that any receipt of genetic information in response to a lawful request for medical information will be deemed inadvertent and not in violation of GINA if the request contained such a warning.

The final rule includes the following language that a covered entity may use to provide such notice: "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an

[9] When asking questions likely to elicit information about a disability, covered entities must, of course, also abide by the requirements of the ADA.

embryo lawfully held by an individual or family member receiving assistive reproductive services." Alternative language may also be used, as long as individuals and health care providers are informed that genetic information should not be provided.

Although one commenter expressed concern that giving notice would impose an unnecessary burden on small businesses, we note that the warning may be conveyed verbally if the request for medical information itself is also verbal. *See* Comment of the National Federation of Independent Business (NFIB). We are aware that many businesses, especially small businesses, do not use forms when requesting medical information, and we do not intend this regulation to change the practice of making such requests verbally.

If a covered entity does not give such a written or verbal notice, it may nonetheless establish that a particular receipt of genetic information in response to a request for medical information was an inadvertent acquisition because the covered entity's request was not made in a way that was "likely to result in the covered entity's obtaining genetic information" (for example where an overly broad response is received in response to a tailored request for medical information). We note, however, that a warning is mandatory in all cases where a covered entity requests a health care professional to conduct an employment-related medical examination on the covered entity's behalf, since in that situation, the covered entity should know that the acquisition of genetic information (e.g., family medical history) would be likely in the absence of the warning. (*See* discussion of 1635.8(d), below.)

The proposed regulation noted that when a covered entity seeks information from an individual who requests a reasonable accommodation under the ADA or state or local law, the acquisition of genetic information as part of the documentation that the individual provides in support of the request is considered inadvertent, as long as the request for documentation was lawful. We received numerous comments asking us to describe in the regulation itself what it means for a request for documentation supporting a request for reasonable accommodation to be considered lawful. *See* Comments of APA, Disability Rights Legal Center (DRLC), the Epilepsy Foundation, and ICC. In response, we explain in the final rule that in order to be considered a lawful request for documentation made in response to an individual seeking a reasonable accommodation under the ADA or state or local law, the request for medical documentation can be made only when the disability and/or the need for accommodation is not obvious. In this situation, the employer may ask the individual for reasonable documentation about his/her disability and/or need for accommodation. Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has a disability within the meaning of the ADA and that the disability necessitates a reasonable accommodation. For example, an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation. *See* EEOC's *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act,* EEOC Notice No. 915.002 (Oct. 17, 2002), *available at http://www.eeoc.gov/policy/docs/accommodation.html.* Like any request for medical documentation, the request for documentation as part of the reasonable accommodation process should generally inform the individual or entity from whom the documentation is sought, using language like that noted above, that genetic information should not be provided.

We note that GINA's prohibition on requesting, requiring, or purchasing genetic information would control during the interactive process used to determine an appropriate reasonable accommodation. The Commission knows of no reason why a covered entity would need to request genetic information to determine an individual's current physical or mental limitations and whether those limitations can be accommodated.

The Commission further recognizes that other federal, state, or local laws may allow covered entities to obtain medical information about employees. A covered entity that inadvertently receives genetic information in response to a lawful request for medical information under such a law would not violate GINA. For example, a covered entity might receive genetic information in connection with an employee's request for FMLA leave to attend to the employee's own serious health condition or in connection with the FMLA's employee return to work certification requirements, even though an employee is not required to provide genetic information in either of these situations.[10] Acquisition of genetic information in these circumstances will be considered inadvertent if the covered entity affirmatively warns individuals and health care providers from whom they are seeking medical documentation not to provide genetic information, or, in the absence of such a warning, where the request for medical information was not likely to result in the acquisition of genetic information.[11] In response to two comments concerning the need for additional clarity with regard to how the exceptions to the prohibition against acquiring genetic information apply to information received pursuant to the FMLA, we have added the above examples to 1635.8(b)(1)(ii)(D)(2)(which was 1635.8(b)(1)(iv) in the proposed rule), as well as additional detail to the preamble's discussion of the FMLA exception (1635.8(b)(3)), discussed below. *See* Comments of APA and Anil Chaudhry.

The Commission believes that the first exception to the general prohibition of requesting, requiring, or purchasing genetic information should also apply when an individual requests leave pursuant to a leave policy independent of a federal, state, or local leave or disability law. Acquisition of genetic information in these circumstances, like the acquisition of genetic information where leave is requested pursuant to the FMLA or a state or local leave law, will be considered inadvertent if the covered entity affirmatively warns individuals and health care providers from whom they are seeking medical documentation not to provide genetic information, using language like that noted above, or, in the absence of such a warning, where the request for medical information was not made in a way that was likely to result in the covered entity's obtaining genetic information. Covered entities should also be aware that overbroad requests for documentation to support

[10] There is a separate exception for the acquisition of family medical history received from individuals requesting leave under the FMLA or similar state or local laws to care for a family member. This exception is discussed in detail below.

[11] One commenter expressed concern that adding any language to the FMLA certification form would result in a statutory violation of the FMLA. *See* Comment of Illinois Credit Union League. The EEOC does not enforce the Family and Medical Leave Act and therefore has no authority to interpret it. We know of no reason, however, that informing a health care provider that genetic information should not be provided when certifying an employee's own serious health condition would lead to a violation of the FMLA. Moreover, the notice informing applicants/employees and health care providers that they must not provide genetic information, including family medical history, to covered entities need not be made on the FMLA certification form itself, as long as it is provided in writing along with the form.

an employee's use of leave may violate the ADA. For information on the appropriate scope of inquiries in response to requests for leave (other than as a reasonable accommodation), *see* EEOC's *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act,* 8 Fair Empl. Prac. Man. (BNA) 405:7701, (Enforcement Guidance) Questions 15–17 (July 27, 2000) *available at http://www.eeoc.gov/policy/docs/guidance-inquiries.html*.

One commenter raised a concern about proposed 1635.8(b)(1)(vi), which extended the inadvertent acquisition exception to a covered entity that learns genetic information about an individual in response to an inquiry about the individual's general health, an inquiry about whether the individual has any current disease, disorder, or pathological condition, or an inquiry about the general health of an individual's family member. *See* Comment of APA. APA asked that this exception be limited to requests "permitted by Federal, State or local law." Rather than add any limiting language, we have decided to eliminate this subsection altogether, as it merely reiterates the examples spelled out in 1635.8(b)(1)(ii)(B) (formerly 1635.8(b)(1)(ii) in the proposed rule).

Finally, one commenter asked that the inadvertent acquisition exception be extended to acquisition of genetic information by a self-insured employer making health insurance billing determinations in its capacity as an insurer. *See* Comment of Navigenics. It is not necessary to extend the exception to cover these circumstances because, when a self-insured employer is acting in its capacity as an insurer, its actions are regulated by Title I of GINA, not Title II. Title I of GINA has specific rules about acquiring genetic information for insurance payment purposes. *See* 42 U.S.C. 1182(c)(3); 42 U.S.C. 300gg–1(c)(3); 26 U.S.C. 9802(c)(3).

Health or Genetic Services: GINA permits covered entities to acquire genetic information where health or genetic services are offered by the employer, including such services offered as part of a wellness program, if the covered entity meets specific requirements. The proposed regulation listed the specific requirements in the statute as prerequisites to the acquisition of genetic information when offering health or genetic services: the individual provides prior knowing, voluntary, and written authorization, meaning that the covered entity uses an authorization form that is written in language reasonably likely to be understood by the individual from whom the information is sought; describes the information being requested; and describes the safeguards in place to protect against unlawful disclosure. Additionally, the proposed rule said that a wellness program or other health or genetic services that a covered entity offers must be voluntary. The preamble to the proposed rule noted that, under the ADA, a wellness program that requires employees to answer disability-related inquiries and/or to submit to a medical examination is voluntary if the program neither requires participation, nor penalizes employees for non-participation.

We received two comments asking whether the written request and authorization to participate in a wellness program could be provided electronically. *See* Comments of AHIP and Kelly Hart & Hallman (KHH). We think this is permissible and have revised the final rule accordingly. We do not think it is necessary to provide in the final rule specific standards for an electronic consent and authorization. The particular format chosen, however, must be functionally equivalent to what would be required in a written authorization, in terms of content and form. For example, because written authorization is a prerequisite to the acquisition of genetic information as part of health or genetic services offered by a covered entity, such as a voluntary wellness program, a covered entity could not utilize an on-line form that first requires an individual to input family medical history and then asks the individual to indicate his or her acceptance of the terms of an authorization. Instead, a potential participant in the health or genetic services being offered must first be presented with an electronic authorization that describes the request in terms reasonably likely to be understood by the individual, the purposes for which it will be used, and the safeguards in place for assuring its confidentiality, before any genetic information (such as family medical history) can be provided.

The proposed regulation stated that individually identifiable information may be provided only to the individual from whom it was obtained and that covered entities are entitled only to receive information in aggregate terms that do not disclose the identity of specific individuals. Some comments objected to a statement in the preamble to the proposed rule that a covered entity that receives "aggregate" information may still violate GINA where the small number of participants, alone or in conjunction with other factors, makes an individual's genetic information readily identifiable, noting that this would impose burdens particularly on small businesses. *See* Comments Chamber/SHRM and IPMA/IMLA.

In the final rule, we have retained the language in the NPRM, which tracked the statutory language. GINA says that a covered entity may only receive genetic information related to a wellness program "in aggregate terms that do not disclose the identity of specific [individuals]," *see* 42 U.S.C. 2000ff–1(b)(2)(D); 2000ff–2(b)(2)(D); 2000ff–3(b)(2)(D); and 2000ff–4(b)(2)(D). However, we have reconsidered the position taken in the preamble to the NPRM that a covered entity offering health or genetic services will not comply with 1635.8(b)(2) if aggregate information disclosed to the covered entity makes the genetic information of individuals readily identifiable. A provider of health or genetic services will likely be unaware of facts known to a covered entity that would make identification of specific individuals readily identifiable from aggregate information. Likewise, a covered entity may not know that the identity of specific individuals from aggregate information will be readily identifiable until after it receives the information. We do not believe that Congress intended to impose liability on covered entities who receive aggregate information about health or genetic services under such circumstances. Therefore, the Commission here clarifies that GINA is not violated if the provider of health or genetic services gives information to a covered entity in aggregate terms that, for reasons outside the control of the provider or the covered entity (such as the small number of participants), makes the genetic information of a particular individual readily identifiable with no effort on the covered entity's part. On the other hand, efforts undertaken by a covered entity to link genetic information provided in the aggregate to a particular employee will violate GINA.

We received numerous comments in response to a question we asked in the preamble to the proposed rule concerning when a wellness program that includes a request for genetic information should be considered voluntary. Specifically, we wanted to know the level of inducement, if any, that a covered entity could offer to promote participation in a wellness program. *See* 74 FR 9056, 9062 (March 2, 2009). From the many comments we received emphasizing the potential cost savings and benefits for employee

health that could be brought about through wellness programs, four approaches to voluntariness emerged. One approach suggested that we use regulations promulgated pursuant to HIPAA, which define maximum levels of inducements employers may offer to employees who participate in, or achieve certain health outcomes as a result of participating in, wellness programs. *See* Comments of American Benefits Council (ABC), Chamber/SHRM, DMAA: The Care Continuum Alliance (DMAA), Dorsey and Whitney, LLP, Healthways, National Business Group on Health (NBGH), and United Healthcare. Under the HIPAA regulations, employers may offer financial inducements of any size to encourage participation in wellness programs, and may offer inducements of up to a specified percentage of the cost of group health insurance coverage for an individual or an individual and family to participants who achieve specific health outcomes. *See* 26 CFR 54.9802–1(f)(1), 29 CFR 2590.702(f)(1), and 45 CFR 146.121(f)(1) (explaining that a wellness program does not violate HIPAA's nondiscrimination requirements if none of the conditions for obtaining a reward are based on an individual satisfying a certain health standard, as long as participation in the program is offered to all similarly situated individuals). *See also* 26 CFR 54.9802–1(f)(2), 29 CFR 2590.702 (f)(2), and 45 CFR 146.121(f)(2) (providing limits on financial inducements when rewards are conditioned on achieving certain health outcomes).[12]

Other comments appeared to suggest a combination of the approach taken in the HIPAA regulations and the rule under the ADA as articulated by EEOC in its *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (July 27, 2000) ("*Enforcement Guidance*"). As we understand this suggestion, the standard for determining whether a wellness program is voluntary under the ADA—that a covered entity neither requires participation nor penalizes individuals for non-participation—should apply to GINA as well. *See* Enforcement Guidance at Question 22. Any inducement that complied with the HIPAA "twenty percent rule" should be deemed neither a penalty for non-participation nor a requirement to participate. Inducements greater than those allowed under the "twenty percent rule" would violate the standard for voluntariness under the ADA and GINA. *See* Comments of AHIP, IPMA/IMLA, KHH, NFIB, and Staywell Health Management.

A third approach merely asked that we allow employers to offer inducements to promote employee participation in wellness programs, but did not indicate whether inducements should be limited in any way. *See* Comments of EEAC and Navigenics. Finally, several comments urged that covered entities not be allowed to offer any monetary inducements to promote participation in wellness programs that include the collection of genetic information, including family medical history. *See* Comments of ACLU, AMA, GPPC and World Privacy Forum.

Balancing the potential benefits of health and genetic services offered to employees on a voluntary basis, including wellness programs, with the need to construe exceptions to the prohibition of acquisition of genetic information in a manner appropriately tailored to their specific purposes, we have concluded that covered entities may offer certain kinds of financial inducements to encourage participation in health or genetic services under certain circumstances, but they may not offer an inducement for individuals to provide genetic information. As a result, the Commission concludes that it would not violate Title II of GINA for a covered entity to offer individuals an inducement for completing a health risk assessment that includes questions about family medical history or other genetic information, as long as the covered entity specifically identifies those questions and makes clear, in language reasonably likely to be understood by those completing the health risk assessment, that the individual need not answer the questions that request genetic information in order to receive the inducement. The regulation provides two examples to illustrate this approach to health risk assessments.

We also believe that Title II allows covered entities to offer financial inducements for participation in disease management programs or other programs that encourage healthy lifestyles, such as programs that provide coaching to employees attempting to meet particular health goals (*e.g.,* achieving a certain weight, cholesterol level, or blood pressure).[13] To avoid a violation of Title II of GINA, however, covered entities who offer such programs and inducements to individuals based on their voluntarily provided genetic information must also offer the programs and inducements to individuals with current health conditions and/or to individuals whose lifestyle choices put them at risk of acquiring a condition.

Recognizing that employers that sponsor group health plans (including self-insured group health plans) are required to comply with Title II of GINA when operating as employers, and that their plans are required to comply with Title I of GINA, the Commission wishes to provide examples of how Titles I and II allow employers and plans to use financial incentives to promote employee wellness and healthy lifestyles.[14] The Commission notes that providing financial incentives in compliance with these GINA Title II regulations does not relieve covered entities of their responsibility to comply with other GINA requirements under Title I, with other civil rights laws, such as the ADA, and with other applicable laws and regulations. *See* 1635.8(b)(2)(iv) (indicating that the ADA requires "reasonable accommodations" to enable individuals with disabilities to participate fully in wellness programs, and that the HIPAA nondiscrimination rules require plans and issuers to provide an individual with a "reasonable alternative" (or waiver of the otherwise applicable standard), when it is unreasonably difficult due to a medical condition to satisfy or medically inadvisable to attempt to satisfy the otherwise applicable standard, 26 CFR 54.9802–1(f)(2), 29 CFR 2590.702(f)(2), and 45 CFR 146.121(f)(2)) and 1635.8(b)(2)(v) (noting that wellness programs that constitute group health plans may have to comply with Title I of GINA, among

[12] The 20 percent threshold described in the HIPAA nondiscrimination rules will increase to 30 percent beginning in 2014 under statutory changes made under the Patient Protection and Affordable Care Act, Public Law 111–148.

[13] A wellness program that provides (directly, through reimbursement, or otherwise) medical care (including genetic counseling) may constitute a group health plan required to comply with section 9802 of the Internal Revenue Code of 1986, 26 U.S.C. 9802, section 702 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1182, or section 2705 of the Public Health Service Act (*i.e.,* Title I of GINA). Regulations issued under these statutes impose special requirements on wellness programs that collect genetic information. Moreover, wellness programs that condition rewards on an individual satisfying a standard related to a health factor must meet additional requirements. *See* 26 CFR 54.9802–1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f).

[14] Whether an employer or other covered entity that sponsors a group health plan chooses to provide benefits through self-insurance or through a policy, certificate, or contract of insurance does not affect the applicability of GINA Titles I and II. *See* 29 CFR 1635.11(b)(2) (discussing the relationship of GINA Titles I and II). The above examples of actions permissible under both titles are therefore helpful to all employers who offer health coverage to employees, whether through self-insured or insured plans.

other laws). While the GINA Title II regulations and the interim rules issued on October 7, 2009 to implement Title I (29 CFR 2590.702–1; 45 CFR 146.122, 26 CFR 54.9802–3T) each prohibit the use of financial inducements to collect genetic information, they both permit covered entities or group health plans (including self-insured plans) to:

- Provide bifurcated health risk assessments (HRAs), under which financial incentives permitted under the applicable title may be used to encourage individuals to complete the HRA, if the section of the questionnaire seeking genetic information (e.g. family medical history) includes a notice that completing that portion is optional and that the reward will be provided whether that portion is completed or not;
- Use information collected through such bifurcated HRAs, including voluntarily provided genetic information indicating that an individual may be at risk for a disease, to target advertising materials or otherwise solicit voluntary participation in a disease management or prevention program, provided that such a program is also available to individuals who do not provide genetic information as part of the HRA (that is, the program is not limited only to individuals who complete the portion of the HRA that requests genetic information);
- Provide financial incentives permitted under the appropriate title to individuals to participate in certain disease management or prevention programs. The incentives to participate in such programs must also be available to individuals who qualify for the program but have not volunteered genetic information through an HRA.

Under the Title II regulation, covered entities may contract with a third party to operate a wellness program or to provide other health or genetic services, or may provide such programs and services through an in-house health services office, as long as individually identifiable genetic information is accessible only to the individual and the health care provider involved in providing such services. Covered entities must ensure that individually identifiable genetic information is not accessible to managers, supervisors, or others who make employment decisions, or to anyone else in the workplace.

Family and Medical Leave Act: Third, GINA recognizes that individuals requesting leave to care for a seriously ill family member under the Family and Medical Leave Act (FMLA) or similar state or local law will be required to provide family medical history (for example, when completing the certification form required by section 103 of the FMLA). A covered entity that receives family medical history under these circumstances would not violate GINA. This exception is needed because, unlike the situations discussed under the inadvertent acquisition exception, the receipt of genetic information in these circumstances is not inadvertent. By asking the employee to provide the information required by the FMLA certification form or similar state or local laws when seeking leave to care for a seriously ill family member, a covered entity is requesting family medical history from the employee.

One commenter expressed concern that businesses that are not covered by the FMLA or similar state or local laws, but who have company policies allowing the use of leave to care for seriously ill family members, would not be covered by this exception. *See* Comment of the Small Business Administration (SBA). We agree that it was unclear in the proposed rule whether acquisition of genetic information in such circumstances would be covered by the exception and therefore provide this clarification: This exception applies to an employer that is not covered by the FMLA or similar state or local laws but that has a policy allowing for the use of leave to care for ill family members, as long as that policy is applied evenhandedly by requiring all employees seeking leave to provide documentation about the health condition of the relevant family member.[15]

Of course, family medical history received from individuals requesting leave pursuant to the FMLA, similar state or local laws, or company policies, is still subject to GINA's confidentiality requirements and must be placed in a separate medical file and treated as a confidential medical record, as more fully described below.

Commercially and Publicly Available Information: Fourth, GINA provides an exception for the purchase of commercially and publicly available materials that may include family medical history. As with the exception applicable to the inadvertent acquisition of family medical history, the Commission reads this exception as applying to all genetic information, not just to family medical history. For example, an employer would not violate GINA if it learned that an employee had the breast cancer gene by reading a newspaper article profiling several women living with the knowledge that they have the gene.

The statute identifies newspapers, magazines, periodicals, and books as potential sources of genetic information. The proposed regulation added to that list information obtained through electronic media, such as the Internet, television, and movies. The exception does not include genetic information contained in medical databases or court records. Research databases available to scientists on a restricted basis, such as databases that NIH maintains for the scientific community, would not be considered "commercially and publicly available."

We received numerous comments in response to our queries as to whether the additional sources noted in the proposed regulation should remain part of the final regulation and whether there are sources similar in kind to those identified in the statute that may contain genetic information and should be included either in the group of excepted sources or the group of prohibited sources, such as personal Web sites or social networking sites. In general, civil rights groups and groups promoting genetic research, as well as others, indicated that excepted sources should be limited to widely available media with no heightened risk for containing genetic information, providing a variety of arguments in support of this position. *See* Comments of ACLU, APA, CGF, FDIC, GPPC, Genetic Alliance, LCCR, Members of PGEP, and World Privacy Forum. Several of these groups also noted that employers who access commercially and publicly available materials with a specific intent of searching for genetic information should not be permitted to take advantage of the exception. *See* Comments of CGF, FDIC, GPPC, Genetic Alliance, LCCR and World Privacy Forum. Employers and employer groups, on the other hand, maintained that media formats such as personal web pages, social networking sites, and blogs should be part of the exception arguing, among other things, that such sources are publicly available and that employers have legitimate reasons to access them. *See* Comments of Chamber/SHRM, EEAC, Navigenics, NFIB, SBA and TOC.[16]

[15] Although we also received a comment requesting that the exception be limited to the acquisition of genetic information directly relevant to the leave request—*e.g.,* if the request is to care for the employee's daughter, only information received about the daughter's condition would be covered by the exception—we find that such a requirement is beyond the scope of our enforcement authority as it would be an attempt to limit the actions of the employee's health care provider who completes the certification form. *See* Comment of World Privacy Foundation.

[16] Chamber/SHRM reiterated its comment that a covered entity must undertake an intentional act of

We conclude that a more detailed explanation of this exception is necessary. First, we agree that media sources with limited access should not be considered commercially and publicly available. Thus, if a media source requires permission for access from a specific individual, as opposed to a media source that simply requires users to obtain a username and/or password, or if access is conditioned on membership in a particular group (e.g., a professional organization), the acquisition of genetic information through that source will not be protected by this exception. For example, many Facebook, Linked In, My Space profiles, and other social networking platforms require permission from the creator of the profile to gain access to anything beyond basic information such as name and profession and therefore would not be considered commercially and publicly available, although the exception at 1635.8(b)(1) would still apply to any genetic information inadvertently obtained from such sources. On the other hand, most personal Web sites and blogs are not so limited, but may simply require users to obtain a username and/or password, and therefore would be considered commercially and publicly available. Of course, there are profiles or portions thereof on social networking sites that do not require permission to access, and there may be situations in which access to a social networking site is granted routinely, so that access cannot be said to be limited. There are also Web sites and blogs that do limit access. The determining factor, then, in deciding whether a media source is commercially and publicly available is whether access requires permission of an individual or is limited to individuals in a particular group, not whether the source is categorized as a social networking site, personal Web site, or blog.

Second, we agree that the exception does not apply to genetic information acquired by covered entities that access commercially and publicly available sources with the intent of obtaining genetic information. This exception was intended to protect from liability a covered entity that inadvertently obtains genetic information and not a covered entity that is actively searching for genetic information. *See* S. Rep. 110–48 at 30 ("The fourth exception, like the first, relates to the inadvertent acquisition of family medical history."). For example, an employer who acquires genetic information by conducting an Internet search for the name of an employee and a particular genetic marker will not be protected by this exception, even if the information the employer ultimately obtained was from a source that is commercially and publicly available. Conversely, an employer who inadvertently acquires genetic information while conducting an Internet search of an employee without reference to a genetic marker will be protected by this exception.

Third, we have concluded that the exception does not apply to the acquisition of genetic information through a media source, whether or not it is commercially and publicly available, if the covered entity is likely to acquire genetic information by accessing that source. Thus, a covered entity that acquires genetic information after accessing a Web site that focuses on issues such as genetic testing of individuals or a commercial database containing individually identifiable health information [17] will not be able to take advantage of this exception. Finally, in response to comments from some employer groups that human resource professionals and other employers may access various media sources for personal reasons and not in their capacity as covered entities, we clarify that the requirements and prohibitions of GINA do not apply to acquisitions of genetic information outside the employment context. *See* Comments of NFIB and Navigenics.

In response to one comment we received, we further clarify that genetic information about an individual acquired through any media source, including one that is commercially and publicly available or a source accessed outside the employment context, may not be used to discriminate in employment decision-making and may not be disclosed in violation of Title II's confidentiality provisions. *See* Comment of National Counsel of EEOC Locals no. 216, American Federation of Government Employees, AFL–CIO (AFGE).

Genetic Monitoring: The statute also permits a covered entity to engage in the genetic monitoring of the biological effects of toxic substances in the workplace, as long as that monitoring meets certain requirements. First, a covered entity must provide written notice of the monitoring and, where the monitoring is not specifically required by federal or state law or regulation, must obtain an individual's prior knowing, written, and voluntary authorization. Second, the regulation describes the type of authorization form the employer must provide in order to ensure that an individual's authorization is knowing and voluntary. The authorization form must be written in a way that is reasonably likely to be understood by the person from whom the information is being sought, must describe the type of genetic information that will be obtained and the general purposes for which it will be used, and must describe the limitations on disclosure of the genetic information. Third, all monitoring must comply with all applicable provisions of the law and implementing regulations, including regulations promulgated pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*), and the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*).

Whether or not the monitoring is undertaken pursuant to federal or state law, GINA requires that the individual receive results of the monitoring and that the covered entity receive information only in aggregate terms that do not disclose the identity of specific individuals. As is the case with health or genetic services offered by a covered entity on a voluntary basis, we have concluded that there is no violation of GINA if a covered entity receives information only in aggregate terms, but is able to identify the genetic information of specific individuals for reasons outside the covered entity's control and with no effort on its part (*e.g.,* because of the small number of employees involved in the monitoring). We have revised the language in the final regulation to mirror the statutory language.

Several commenters mentioned the need for a provision in the final regulation that protects workers who refuse to participate in genetic monitoring that is not required by law. *See* Comments of ACLU, CGF, Genetic Alliance, GPPC and LCCR. These commenters also requested that the final regulation describe what actions a covered entity may legitimately take in response to such a refusal. *Id.* We agree with these groups that GINA prohibits a covered entity from retaliating or otherwise discriminating against an employee who refuses to participate in genetic monitoring that is not specifically required by law. An individual who refuses to participate in a voluntary genetic monitoring program

requesting, requiring or purchasing genetic information to violate the prohibition on acquisition and argued that accessing a social networking site that does not require payment is therefore outside the scope of Title II. As explained above, we reject this interpretation of the statute.

[17] For example, one commenter provided several lists of identifiable individuals with diabetes available for sale on the Internet. *See* Comment of World Privacy Forum.

should be informed of the potential dangers (*e.g.,* the consequences that might result if the effects of certain toxins in the workplace are not identified), but the covered entity is prohibited from taking any adverse action, as that term is understood under Title VII of the Civil Rights Act of 1964 and other civil rights laws, against the individual.

DNA Testing for Law Enforcement or Human Remains Identification Purposes: Finally, sections 202(b), covering employers, and 205(b), covering apprenticeship or other training programs, include a sixth exception for employers that engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification. GINA provides that these entities may request or require genetic information of such employer's employees, apprentices, or trainees, "but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination." 42 U.S.C. 2000ff–1(b)(6) and 2000ff–4(b)(6). The genetic information may be maintained and disclosed in a manner consistent with this limited use. This is a very limited exception and, if the analysis is properly conducted, an employer or training program would not obtain health-related genetic information. Several comments, while expressing general agreement with EEOC's position, requested that the final regulation make clear that genetic information covered by this exception must be destroyed after a designated time period and that the samples and results be used solely for quality control and not be entered into any law enforcement database. *See* Comments of CGF, Genetic Alliance, and GPPC. We find that it is unnecessary to add any further limitations to those set forth in the statute and the proposed regulation. Both make clear that this is a very limited exception, allowing only for the use of genetic information for analysis of DNA identification markers for quality control and to detect sample contamination, and not for any other law enforcement purpose. Rather than specifying in the regulation how such information should be used, we believe it is sufficient to state, as the final rule does, that the information may be used in accordance with the purpose for which it was acquired.

Section 1635.8(c)

We have added a new provision to 1635.8. Subsection (c)(1) responds to a comment that said that information about an employee's manifested disease, disorder, or pathological condition should not be considered genetic information (i.e. family medical history) about a family member working for the same employer. *See* Comment of Chamber/SHRM. We decline to take this position in the final rule, because we believe that the information would be family medical history that an employer could not use to discriminate against, or disclose with respect to, the second employee. We agree, however, that a request for information about whether an individual has a manifested disease, disorder, or pathological condition does not violate GINA simply because a family member of the individual to whom the request was made works for the same employer, is a member of the same labor organization, or is participating in the same apprenticeship program as the person from whom the information was requested. We have modified the final rule to reflect this more limited point.

Section 1635.8(c)(2) addresses a related issue that may arise when an individual's family member who, although not an employee of the same employer, a member of the same labor organization, or a participant in the same apprenticeship program as the individual, nevertheless receives health or genetic services offered by a covered entity as permitted under 1635.8(b)(2). The collection of information about the manifested disease or disorder of a family member in the course of providing health or genetic services to the family member is not an unlawful acquisition of genetic information about the individual.

Section 1635.8(d)

We received several comments concerning the extent to which health care professionals may request genetic information (particularly family medical history) as part of a lawful medical examination (*e.g.,* a post-offer exam or fitness for duty exam) to determine whether an individual has a manifested disease, disorder, or pathological condition. A number of comments suggested that the final rule should not necessarily limit the scope of the inquiries a health care professional may make, but should ensure that any genetic information collected as part of the examination is not shared with the employer. *See* Comments of AMA, Chamber/SHRM, EEAC and IPMA; *see also* Comments of United States Customs and Immigration Service (requesting clarification on this point). We do not think it is sufficient for an employer or other covered entity merely to indicate to the health care professional conducting a medical examination on its behalf that the covered entity does not want to receive genetic information acquired as part of the examination. The final rule says that the covered entity must tell the health care professional not to collect genetic information as part of a medical examination intended to determine the ability to perform a job, and must take additional reasonable measures within its control if it learns that genetic information is being requested or required. This could include no longer using the services of a health care professional who continues to request or require genetic information during medical examinations after being informed not to do so. Unlike the warning described in 1635.8(b)(1), which may not be necessary if a covered entity can show that it could not have known it would receive genetic information in response to a lawful request for medical documentation, the warning provided for in 1635.8(d) is required, because any time an employer sends an applicant or employee for a medical examination, the employer knows or should know that genetic information is likely to be requested. We note, however, that family medical history and other genetic information may be obtained as part of health or genetic services provided by the employer (*see* 29 CFR 1635.8(b)(2)), and that Title II of GINA does not apply at all to medical examinations conducted for the purpose of diagnosis and treatment that are unrelated to employment (*e.g.,* where an employee seeks health services from the same hospital where he or she works). *See* 1635.1(b)(1).

The preamble to the proposed rule suggested that there would never be situations in which genetic information (including family medical history) would be needed as part of a medical examination conducted to assess an individual's ability to perform a job. One federal agency asked whether the final rule would include an exception allowing an employer or other covered entity to collect family medical history (*e.g.,* questions about the prevalence of a psychiatric disability in family members of an individual) as part of the process of determining whether to grant or deny a security clearance. *See* Comments of United States Customs and Immigration Services. Neither the plain language of Title II, which enumerates very specific exceptions to the rule prohibiting acquisition of genetic information, nor GINA's legislative history references such an exception; therefore, the Commission declines to include one in the final rule.

In response to comments from some employers that genetic information may be needed to make a diagnosis of a manifested disease, disorder, or pathological condition, we considered adding a very narrow exception to the prohibition on acquiring genetic information to allow a covered entity or health care professional acting on the covered entity's behalf to request genetic information as part of a medical examination where doing so is necessary to determine whether an individual has a particular manifested disease, disorder, or pathological condition and where information about the particular disease, disorder, or pathological condition, as opposed to its signs and symptoms, is necessary to evaluate an individual's ability to perform a particular job. *See* Comments of AHIP, Chamber/SRHM, EEAC and SBA. We decided against creating this extra-statutory exception, however, because neither the commenters that raised this concern nor the experts with whom we consulted were able to provide an example that fits within it. Although there may be cases where a manifested disease, disorder, or pathological condition can only be positively diagnosed through use of genetic information, there does not appear to be a case in which the diagnosis, as opposed to the signs and symptoms, is necessary to evaluate an individual's ability to perform a particular job. For example, although experts at the National Institutes of Health noted that a genetic test may be used to confirm a diagnosis of cystic fibrosis based principally on the clinical analysis of the patient, the signs or symptoms of cystic fibrosis (including, for example, frequent lung infections, sinusitis, bronchitis and pneumonia, and nasal polyps, among others) would be sufficient, regardless of the specific disease, disorder, or pathological condition that may be causing them, to assess an individual's ability to do a job. Moreover, in the case of cystic fibrosis, it is extremely unlikely that an individual seeking employment would be unaware of his or her diagnosis. Because we have no information supporting the need for this type of exception, we decided not to add to the exceptions specifically described in the statute.

Section 1635.9 Confidentiality

GINA section 206 addresses confidentiality of genetic information generally, establishes permitted disclosures, and describes the relationship between GINA and HIPAA. Each of these items is discussed below.

Section 1635.9(a) Treatment of Genetic Information

Under GINA, covered entities are required to treat genetic information in their possession the same way they treat medical information generally. They must keep the information confidential and, if the information is in writing, must keep it apart from other personnel information in separate medical files.[18] Congress made express the requirement that covered entities keep genetic information confidential by using the confidentiality regime required by the ADA generally for medical records. H.R. Rep. 110–28, part I, at 39. GINA does not require that covered entities maintain a separate medical file for genetic information. Genetic information may be kept in the same file as medical information subject to the ADA.

In response to questions raised by commenters, we note that although genetic information placed in personnel files prior to the effective date of GINA Title II need not be removed and an employer will not be liable under GINA for the mere existence of the information in the file, disclosing such information to a third party is prohibited. *See* Comments of EEAC and SBA. GINA's prohibitions on use and disclosure of genetic information apply to all genetic information that meets the statutory definition, including genetic information acquired prior to the effective date of GINA. *See* Comments of CGF, Genetic Alliance, and GPPC (requesting clarification of this point). We would not anticipate that removing genetic information in a personnel file acquired before GINA's effective date in response to a request to disclose the file would impose a significant burden on covered entities. Most genetic information is medical information that has been subject to the ADA's confidentiality requirements since 1992 (with respect to employers with 25 or more employees) or 1994 (with respect to employers with 15 to 24 employees). Consequently, although all covered entities must remove genetic information from personnel files prior to disclosing those files, we would anticipate that covered entities who have been complying with the ADA will have very few personnel files that contain genetic information.

We received one comment questioning what an employer should do if it is aware that employees are discussing genetic information of co-workers with other employees. *See* Comment of Navigenics. We do not think this has been a significant problem under the ADA, which has a similar confidentiality rule pertaining to employee medical information in general, and therefore do not think that many charges will be filed alleging that a covered entity violated GINA by allowing co-workers to share genetic information about another individual. However, we note that the analysis of an employer's responsibility to prevent harassment by co-workers is instructive—an employer is liable for harassment of an employee by co-workers if it knew or should have known of the misconduct, unless it can show that it took immediate and appropriate corrective action. *See* 29 CFR 1604.11(d). We believe a similar standard would work well in the case of an employer's responsibility to prevent individuals from discussing the genetic information of co-workers.

Chamber/SHRM requested that the final regulation clarify that certain communications are exempt from GINA's confidentiality provisions, such as communications to a contractor performing relevant business functions (*e.g.,* storing medical information on behalf of an employer) or to attorneys for purposes of litigation or legal assessment. This clarification is not necessary. First, it is apparent that a covered entity's attorney or a business with whom it has contracted to store medical information on its behalf is an agent of the covered entity and would therefore be permitted access to relevant genetic information. Second, as noted above, GINA uses the confidentiality regime required by the ADA generally for medical records. This regime does not include specific exceptions for communications to attorneys for the purposes of litigation or to contractors performing relevant business functions; yet we have not seen any charges challenging these types of communications.

As noted above, a covered entity does not violate GINA when it acquires genetic information through sources that are publicly and commercially available, as long as it does not research those sources with the intent of acquiring genetic information or access sources that are likely to include genetic

[18] Genetic information that a covered entity receives verbally and does not reduce to writing must still be kept confidential, except to the extent that GINA permits disclosure. As noted in the regulation at 1635.9(a)(3), a covered entity need not reduce to writing genetic information that it receives orally. Although one commenter requested that this language be altered to indicate that covered entities should not reduce genetic information that it receives orally to writing, we have decided to maintain the existing language. *See* Comment of DLRC. This language was inserted in the proposed rule to respond to concerns that GINA required employers to reduce to writing any genetic information received.

information. For example, an employer that purchased a newspaper with an obituary about a family member of an employee indicating that the employee's relative died of a disease or disorder that has a genetic component would not violate GINA. Similarly, a labor organization may lawfully acquire a magazine or periodical with an article about a member that includes family medical history about the member's parent, sibling, or child. In neither instance, nor in any similar instance where a covered entity acquires family medical history through sources that are publicly and commercially available, must the covered entity place the information into a confidential medical file. Moreover, inasmuch as one of GINA's purposes is the protection from disclosure of otherwise private genetic information, disclosure of genetic information obtained through sources that are commercially and publicly available does not violate the Act. However, a covered entity may not use family medical history to make employment decisions, even if the information was acquired through commercially and publicly available sources.

Section 1635.9(b) Exceptions to Limitations on Disclosure

GINA permits disclosure of genetic information in limited circumstances. First, a covered entity may disclose genetic information to the individual to whom it relates, if the individual requests disclosure in writing. Second, the section states that genetic information may be provided to an occupational or other health researcher "if the research is being conducted in compliance with the regulations under" 45 CFR part 46 (regulating research involving human subjects). One commenter requested that this type of disclosure only be permitted if participation in the research is voluntary and the information obtained is not used for secondary research purposes. *See* Comment of ACLU. The requirements of 45 CFR part 46 itself, however, include obtaining the informed consent of research participants, which involves fully informing participants of the purposes and risks of the research, as well as the extent to which confidentiality of identifying records will be maintained. *See* 45 CFR 46.116. We need not adopt further safeguards in these circumstances.

The third exception permits disclosure in compliance with a court order. It provides that the disclosure of genetic information must be carefully tailored to the terms of the order. Moreover, the language of the regulation, taken from the statute, notes that if the court order was secured without the knowledge of the employee or member to whom the information refers, the covered entity must inform the employee or member of the court order and the information that was disclosed. Because the covered entity may not know whether the employee or member is aware of the court order, it should inform the employee or member of the court order and the disclosed information unless it knows that the employee or member already has this information. This exception does not allow disclosures in other circumstances during litigation, such as in response to discovery requests or subpoenas that are not governed by an order specifying that genetic information must be disclosed. Thus, a covered entity's refusal to provide genetic information in response to a discovery order, subpoena, or court order that does not specify that genetic information must be disclosed is consistent with the requirements of GINA.

The fourth exception permits disclosure of relevant genetic information to government officials investigating compliance with the statute. The fifth exception permits disclosure consistent with the requirements of the FMLA or similar state or local leave law. For example, an employee's supervisor who receives a request for FMLA leave from an employee who wants to care for a child with a serious health condition may forward this request to persons with a need to know the information because of responsibilities relating to the handling of FMLA requests. Finally, the sixth exception permits disclosure of family medical history to federal, state, or local public health officials in connection with a contagious disease that presents an imminent hazard of death or life-threatening illness. The statute requires the covered entity to notify the employee of any release of a family member's medical history information when undertaken for this purpose.

Section 1635.9(c) Relationship to HIPAA Privacy Regulations

GINA section 206(c) provides that the provisions of Title II of GINA are not intended to apply to uses and disclosures of health information governed by the HIPAA Privacy Rule. Accordingly, and consistent with the general rule of construction implementing this statutory provision at 1635.11(d), this rule provides at 1635.9(c) that nothing in 1635.9 should be construed as applying to the use or disclosure of genetic information that is protected health information subject to the HIPAA Privacy Rule. *See* discussion of Section 1635.11(d), infra, for an example of the interaction under GINA between the HIPAA Privacy Rule and this regulation.

Section 1635.10 Enforcement and Remedies

In crafting GINA's enforcement and remedies section, Congress recognized the advisability of using the existing mechanisms in place for redress of other forms of employment discrimination. In particular, the Senate noted that this section intends to take "advantage of the expertise and process of the EEOC." S. Rep. No. 110–48, at 31 & n.17. In this regard, GINA and the final regulation provide the following:

- The enforcement mechanism applicable and remedies available to employees and others covered by Title VII of the Civil Rights Act of 1964 apply to GINA as well.[19] The statute references sections 705–707, 709–711, and 717 of Title VII, 42 U.S.C. 2000e–4, *et seq.* The Commission notes that its implementing regulations found at 29 CFR parts 1601 (procedural regulations), 1602 (recordkeeping and reporting requirements under Title VII and the ADA), and 1614 (federal sector employees) apply here as well.
- The procedures applicable and remedies available to employees covered by sections 302 and 304 of the Government Employee Rights Act of 1991, 42 U.S.C. 2000e–16(b) & (c) (GERA) apply under GINA.[20] EEOC regulations applicable to GERA are found at 29 CFR part 1603.
- The procedures applicable and remedies available to employees covered by 3 U.S.C. 401 *et seq.* are set forth in 3 U.S.C. 451–454.[21] These

[19] As defined by section 701 of the Civil Rights Act of 1964, 42 U.S.C. 2000e, an employee is an individual employed by a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any agent of such a person.

[20] As defined by section 304(a) of GERA, 42 U.S.C. 2000e–16c(a), an employee is a person chosen or appointed by an individual elected to public office by a State or political subdivision of a State to serve as part of the personal staff of the elected official, to serve the elected official on a policy-making level, or to serve the elected official as the immediate advisor on the exercise of the elected official's constitutional or legal powers.

[21] As defined by, and subject to the limitations in, section 2(a) of the Presidential and Executive Office Accountability Act, 3 U.S.C. 411(c), these employees include any employee of the executive branch not otherwise covered by section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–16, section 15 of the Age Discrimination in

sections provide for counseling and mediation of employment discrimination allegations and the formal process of complaints before the Commission using the same administrative process generally applicable to employees in the Executive Branch of the Federal government; that is, the process set forth in 29 CFR part 1614.

Employees covered through the Congressional Accountability Act of 1995 must use the procedures set forth in that statute. The Commission has no authority with respect to the enforcement of GINA as to employees covered through this provision.

The final regulation includes a separate reference to the remedies provisions applicable to GINA. Similar to other federal anti-discrimination laws, GINA provides for recovery of pecuniary and non-pecuniary damages, including compensatory and punitive damages. The statute's incorporation by reference of section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a) also imports the limitations on the recovery of compensatory damages for future pecuniary losses, emotional pain, suffering, etc., and punitive damages applicable generally in employment discrimination cases, depending on the size of the employer. Punitive damages are not available in actions against the federal government, or against state or local government employers.

Finally, at 1635.10(c) the regulation notes that covered entities are required to post notices in conspicuous places describing GINA's applicable provisions. The Commission issued a revised EEO poster that may be used for this purpose prior to GINA's effective date (November 21, 2009). It is available to order or print on EEOC's Web site at *http://www1.eeoc.gov/employers/poster.cfm.*

Section 1635.11 Construction

GINA section 209 and this section of the regulation set forth rules of construction applicable to GINA's coverage and prohibitions. They address principally GINA's relationship to other federal laws covering discrimination, health insurance, and other areas of potential conflict.

Section 1635.11(a) Relationship to Other Laws Generally

The subsection first addresses the relationship of Title II of GINA to other federal, state, local, and tribal laws governing genetic discrimination, the privacy of genetic information, and discrimination based on disability. Over 30 states have laws addressing genetic discrimination in employment. Some may be more stringent than GINA; others less so. GINA makes clear that it does not preempt any other state or local law that provides equal or greater protections than GINA from discrimination on the basis of genetic information or improper access or disclosure of genetic information. Additionally, Title II of GINA does not limit the rights or protections under federal, state, local or tribal laws that provide greater privacy protection to genetic information. The EEOC will provide information on our public Web site about state and local laws that prohibit employment discrimination on the basis of genetic information. *See* Comment of SBA (requesting more information about state and local laws addressing genetic information).

Similarly, GINA does not affect an individual's rights under the ADA, the Rehabilitation Act, or state or local laws that prohibit discrimination against individuals based on disability. So, for example, an individual could challenge the disclosure of genetic information under the ADA where the information is also considered medical information subject to that law. Additionally, even though information that an employee currently has a disease, such as cancer, is not subject to GINA's confidentiality provisions, such information would be protected under the ADA, and an employer would be liable under that law for disclosing the information, unless a specific ADA exception applied.

GINA does limit, however, an employer's ability to obtain genetic information as a part of a disability-related inquiry or medical examination. For example, an employer will no longer be able to obtain family medical history or conduct genetic tests of post-offer job applicants, as it currently may do under the ADA. We reiterate, however, that family medical history and other genetic information may be acquired in connection with employer-provided health or genetic services, including wellness programs, that are provided on a voluntary basis (see 1635.8(b)(2)), and that Title II of GINA does not apply to genetic information acquired as part of a medical examination conducted for the purpose of diagnosis and treatment that is wholly unrelated to employment (e.g., where an employee seeks health services from the hospital where he or she works).

Other provisions in this section clarify that GINA does not (1) limit or expand rights or obligations under workers' compensation laws; (2) limit or expand the rights of federal agencies to conduct or support occupational or other health research conducted in accordance with the rules found in 45 CFR part 46; or (3) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration or other workplace health and safety laws and regulations. Another provision addresses the exemption from GINA of the Armed Forces Repository of Specimen Samples for the Identification of Remains.

The final provision in this subsection makes clear that GINA does not require that a covered entity provide individuals with any specific benefits or specialized health coverage. A covered entity does not have to offer health benefits that relate to any specific genetic disease or disorder. GINA merely requires that the covered entity not discriminate against those covered by the Act on the basis of genetic information.

Section 1635.11(b) Relationship to Other Federal Laws Governing Health Coverage

GINA section 209(a)(2)(B) includes four subsections that address the relationship between Title II and requirements or prohibitions that are subject to enforcement under other federal statutes addressing health coverage. Section 209(a)(2)(B)(i) states that nothing in Title II provides for enforcement of, or penalties for, violations of requirements or prohibitions subject to enforcement under GINA Title I. The three following subsections, sections 209(a)(2)(B)(ii)–(iv), state that nothing in Title II provides for enforcement of, or penalties for, any requirement or prohibition subject to enforcement under various sections of ERISA, the Public Health Service Act, and the Internal Revenue Code, which generally prohibit a group health plan or health insurance issuer in the group market from:

- Imposing a preexisting condition exclusion based solely on genetic information, in the absence of a diagnosis of a condition;
- Discriminating against individuals in eligibility and continued eligibility for benefits based on genetic information; and

Employment Act of 1967, 29 U.S.C. 633a, or section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, whether appointed by the President or any other appointing authority in the executive branch, including an employee of the Executive Office of the President.

• Discriminating against individuals in premium or contribution rates under the plan or coverage based on genetic information, although such a plan or issuer may adjust premium rates for an employer based on the manifestation of a disease or disorder of an individual enrolled in the plan.

The intent of this section is to create a clear "firewall" between GINA Titles I and II so that health plan or issuer provisions or actions are addressed and remedied through GINA Title I, ERISA, the Public Health Service Act, or the Internal Revenue Code and not through Title II and other employment discrimination procedures.

We received a variety of comments requesting further clarification of the firewall provision. Employer groups argued that the final regulation should make very clear that the firewall is broad. *See* Comments of ABC, Blue Cross and Blue Shield Association (BCBSA), Chamber/SHRM and NFIB. Some of these same groups requested that more specific language about the lack of double liability be inserted into the regulation itself and provided model language for this purpose. *See* Comments of ABC, Blue Cross and Blue Shield Association, (BSBCA), and Chamber/SHRM. Civil rights groups, groups promoting genetic research, and others argued that the final rule should clarify that the firewall was not intended to immunize from liability decisions and actions that violate Title II, simply because those decisions involve health benefits governed by Title I. *See* Comments of CGF, Congressional Committee on Education and Labor (CCEL) (offering specific model language), Genetic Alliance, and GPPC. CCEL argued that the proposed regulation failed to make clear that liability under GINA is based on the actor who discriminates (i.e., employers or health plans/insurers) and not the act of discrimination. *See* Comment of CCEL. Commenters also requested that the final regulation include additional examples illustrating how the firewall will work, with one commenter providing specific examples for this purpose. *See* Comments of CCEL (providing specific examples and model language), Navigenics and SBA. We agree that further clarification of the firewall is required and, after careful review of the comments received, have made the necessary changes to the preamble and the final regulation.

Section 209(a)(1)(B) eliminates "double liability" for health plans and insurers by preventing Title II causes of action from being asserted regarding matters subject to enforcement under Title I or the other genetics provisions for group coverage in ERISA, the Public Health Service Act, and the Internal Revenue Code. The firewall seeks to ensure that health plan or issuer provisions or actions are addressed and remedied through ERISA, the Public Health Service Act, or the Internal Revenue Code, while actions taken by employers and other GINA Title II entities are remedied through GINA Title II. The regulation reiterates the language of the section, noting the specific sections from ERISA, the Public Health Service Act, and the Internal Revenue Code that the section covers.

Employers and other GINA Title II covered entities, however, would remain liable for any of their actions that violate Title II, even where those actions involve access to health benefits, because such benefits are within the definition of compensation, terms, conditions, or privileges of employment. For example, an employer that fires an employee because of anticipated high health claims based on genetic information remains subject to liability under Title II. On the other hand, health plan or issuer provisions or actions related to the imposition of a preexisting condition exclusion; a health plan's or issuer's discrimination in health plan eligibility, benefits, or premiums based on genetic information; a health plan's or issuer's request that an individual undergo a genetic test; and/or a health plan's or issuer's collection of genetic information remain subject to enforcement under Title I exclusively. Below are a few examples of how the firewall is intended to operate:

• If an employer contracts with a health insurance issuer to request genetic information, the employer has committed a Title II violation. In addition, the plan and issuer may have violated Title I of GINA.

• If an employer directs its employees to undergo mandatory genetic testing in order to be eligible for health benefits, the employer has committed a Title II violation.

• If an employer or union amends a health plan to require an individual to undergo a genetic test, then the employer or union is liable for a violation of Title II. In addition, the health plan's implementation of the requirement may violate Title I.

Section 1635.11(c) Relationship to Authorities Under GINA Title I

The final subsection in GINA section 209 provides that nothing in GINA Title II prohibits a group health plan or group health insurance issuer from engaging in any activity that is authorized under the GINA Title I provisions identified in GINA section 209(a)(2)(B)(i)–(iv), including any implementing regulations thereunder. The section and the implementing regulation reiterate the limitations imposed on Title II in the area of group health coverage.

Section 1635.11(d) Relationship to HIPAA Privacy Regulations

Final § 1635.11(d) implements section 206(c) of GINA Title II by providing, as a general rule of construction, that this regulation does not apply to protected health information subject to the HIPAA Privacy Rule. Thus, entities subject to the HIPAA Privacy Rule must continue to apply the requirements of the HIPAA Privacy Rule, and not the requirements of GINA Title II and these implementing regulations, to genetic information that is protected health information. For example, if a hospital subject to the HIPAA Privacy Rule treats a patient who is also an employee of the hospital, any genetic information that is obtained or created by the hospital in its role as a health care provider is protected health information and is subject to the requirements of the HIPAA Privacy Rule and not those of GINA. In contrast, however, any genetic information obtained by the hospital in its role as employer, for example, as part of a request for leave by the employee, would be subject to GINA Title II and this rule. Similarly, a health care provider may share genetic information, consistent with the HIPAA Privacy Rule, in the course of providing genetic services as part of a voluntary wellness program.

Several commenters requested that the final regulation make clear that genetic information obtained by a health care provider covered by the HIPAA Privacy Rule may not be used in making employment decisions and must be kept separate from employment files. *See* Comments of CGF, Genetic Alliance and GPPC. Another commenter was concerned that the language in the proposed preamble suggested that an entity covered by both the HIPAA Privacy Rule and GINA can use genetic information to discriminate against applicants and employees because the requirements of GINA do not apply to it. *See* Comment of World Privacy Forum. In response to these comments, we clarify that all entities covered by Title II of GINA, whether or not they are also covered by the HIPAA Privacy Rule, must follow the requirements of GINA when they are acting as employers.

Section 1635.12 Medical Information That Is Not Genetic Information

The final regulation states that a covered entity does not violate GINA by

acquiring, using, or disclosing medical information about a manifested disease or disorder that is not genetic information, even if the disease or disorder may have a genetic basis or component. It further notes, however, that the ADA, and the applicable regulations issued in support of the Act, would limit the disclosure of genetic information that also is medical information and covered by the ADA. In response to a comment, we clarify that GINA prohibits discrimination based on genetic information and not on the basis of a manifested condition, while the ADA prohibits discrimination on the basis of manifested conditions that meet the definition of disability. *See* Comment of ICC. Although another commenter expressed concern that neither GINA nor the ADA protects individuals with a manifested genetic disease that is not yet substantially limiting, we note that we have no authority under these regulations to expand the coverage of GINA. *See* Comment of Burton Blatt Institute. Moreover, given the broader definition of disability that now exists under the Americans with Disabilities Act Amendments Act (ADAAA), it is less likely that a significant number of individuals will fall within this gap. Perhaps most notably, the revised definition of the "regarded as" definition of "disability" would apply to anyone against whom an employer or other covered entity takes a prohibited action (*e.g.,* failure to hire or termination) based on an actual or perceived physical or mental impairment that is not transitory (lasting or expected to last for six months or less) and minor. *See* 42 U.S.C. 12102(3)(A).

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not 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. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

Title II of GINA applies to all employers with fifteen or more employees, approximately 822,000 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy. *See Firm Size Data* at *http://sba.gov/advo/research/data.html#us.*

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because it imposes no reporting burdens and only minimal costs on such firms. GINA is intended to prevent discrimination based on concerns that genetic information about an individual suggests an increased risk of, or predisposition to, acquiring a condition in the future. Because individuals protected under GINA do not have currently manifested conditions that would result in any workplace barriers, the law imposes no costs related to making workplace modifications. To the extent GINA requires businesses that obtain genetic information about applicants or employees to maintain it in confidential files, GINA permits them to do so using the same confidential files they are already required to maintain under Title I of the Americans with Disabilities Act.

The Act may require some modification to the post offer/pre-employment medical examination process of some employers, to remove from the process questions pertaining to family medical history. We do not have data on the number and size of businesses that obtain family medical history as part of a post-offer medical examination. However, our experience with enforcing the ADA, which required all employers with fifteen or more employees to remove medical inquiries from their application forms, suggests that revising post-offer medical questionnaires to eliminate questions about family medical history would not impose significant costs. We recognize that some employers who currently request medical information from employees verbally may decide to make such requests in writing and may create a form for this purpose, in response to the safe harbor described in 1635.8(b)(1)(i). We have no data that would enable us to determine how many businesses will change their practices, but do not believe the cost of creating a form for those businesses who choose to do so would be significant.

GINA will require that covered entities obtain and post revised notices informing covered individuals of their rights under the law. Employers will not incur any costs related to obtaining or posting these notices because the Commission provides employers, at no cost, a poster explaining the EEO laws that will be updated to include information about GINA.

To the extent that employers will need to expend resources to train human resources staff and others on the requirements of GINA, we note that the EEOC conducts extensive outreach and technical assistance programs, many of them at no cost to employers, to assist in the training of relevant personnel on EEO-related issues. In FY 2008, for example, EEOC's outreach efforts included 5,360 education, training, and outreach events reaching over 270,000 people. EEOC District offices conducted 530 no-fee outreach events directed toward small businesses, including many events in partnership with employer associations, such as the Society for Human Resource Management, and the Industry Liaison Groups and other federal agencies, such as the National Labor Relations Board and the Office of Federal Contract Compliance Programs. Events included oral presentations, training and stakeholder input meetings involving 28,525 small business representatives. We expect to include information about GINA in our outreach programs in general and to offer numerous GINA-specific outreach programs once the regulation implementing Title II of GINA becomes final. We will also post technical assistance documents on our Web site explaining the basics of the new regulation, as we do with all of our new regulations and policy documents. We estimate that typical human resources professionals will need to dedicate, at most, three hours to gain a satisfactory understanding of the new requirements, either by attending an EEOC-sponsored event or reviewing the relevant materials on their own. We further estimate that the median hourly pay rate of an HR professional is approximately $46.40. *See* Bureau of Labor Statistics, Occupational Employment and Wages, May 2009 at *http://www.bls.gov/oes/current/oes113049.htm#5#5.* Assuming that small entities have between one and five HR professionals/managers, we estimate that the cost per entity of getting appropriate training will be between approximately $139.00 and $696.00, at the high end. EEOC does not believe that this cost will be significant for the impacted small entities.

Although several commenters requested that EEOC provide training and technical assistance specifically geared towards small businesses, we received no comments disputing our estimates of the number of small entities impacted or the cost to those entities. *See* Comments of NFIB, NSBA and SBA. As noted above, EEOC will offer training on Title II of GINA in various formats, as well as issuing the necessary technical assistance guidance.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Dated: October 29, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

List of Subjects in 29 CFR Part 1635

Administrative practice and procedure, Equal employment opportunity.

■ For the reasons set forth in the preamble, the EEOC amends 29 CFR chapter XIV by adding part 1635 to read as follows:

PART 1635—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

Sec.

1635.1 Purpose.
1635.2 Definitions—general.
1635.3 Definitions specific to GINA.
1635.4 Prohibited practices—in general.
1635.5 Limiting, segregating, and classifying.
1635.6 Causing a covered entity to discriminate.
1635.7 Retaliation.
1635.8 Acquisition of genetic information.
1635.9 Confidentiality.
1635.10 Enforcement and remedies.
1635.11 Construction.
1635.12 Medical information that is not genetic information.

Authority: 110 Stat. 233; 42 U.S.C. 2000ff.

§ 1635.1 Purpose.

(a) The purpose of this part is to implement Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff, *et seq.* Title II of GINA:

(1) Prohibits use of genetic information in employment decision-making;

(2) Restricts employers and other entities subject to Title II of GINA from requesting, requiring, or purchasing genetic information;

(3) Requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information; and

(4) Provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of its protections.

(b) This part does not apply to actions of covered entities that do not pertain to an individual's status as an employee, member of a labor organization, or participant in an apprenticeship program. For example, this part would not apply to:

(1) A medical examination of an individual for the purpose of diagnosis and treatment unrelated to employment, which is conducted by a health care professional at the hospital or other health care facility where the individual is an employee; or

(2) Activities of a covered entity carried on in its capacity as a law enforcement agency investigating criminal conduct, even where the subject of the investigation is an employee of the covered entity.

§ 1635.2 Definitions—general.

(a) *Commission* means the Equal Employment Opportunity Commission, as established by section 705 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–4.

(b) *Covered Entity* means an employer, employing office, employment agency, labor organization, or joint labor-management committee.

(c) *Employee* means an individual employed by a covered entity, as well as an applicant for employment and a former employee. An employee, including an applicant for employment and a former employee, is:

(1) As defined by section 701 of the Civil Rights Act of 1964, 42 U.S.C. 2000e, an individual employed by a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any agent of such a person;

(2) As defined by section 304(a) of the Government Employee Rights Act, 42 U.S.C. 2000e–16c(a), a person chosen or appointed by an individual elected to public office by a State or political subdivision of a State to serve as part of the personal staff of the elected official, to serve the elected official on a policy-making level, or to serve the elected official as the immediate advisor on the exercise of the elected official's constitutional or legal powers.

(3) As defined by section 101 of the Congressional Accountability Act, 2 U.S.C. 1301, any employee of the House of Representatives, the Senate, the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, or the Office of Technology Assessment;

(4) As defined by, and subject to the limitations in, section 2(a) of the Presidential and Executive Office Accountability Act, 3 U.S.C. 411(c), any employee of the executive branch not otherwise covered by section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–16, section 15 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a, or section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, whether appointed by the President or any other appointing authority in the executive branch, including an employee of the Executive Office of the President;

(5) As defined by, and subject to the limitations in, section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–16, and regulations of the Equal Employment Opportunity Commission at 29 CFR 1614.103, an employee of a federal executive agency, the United States Postal Service and the Postal Rate Commission, the Tennessee Valley Authority, the National Oceanic and Atmospheric Administration Commissioned Corps, the Government Printing Office, and the Smithsonian Institution; an employee of the federal judicial branch having a position in the competitive service; and an employee of the Library of Congress.

(d) *Employer* means any person that employs an employee defined in § 1635.2(c) of this part, and any agent of such person, except that, as limited by section 701(b)(1) and (2) of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b)(1) and (2), an employer does not include an Indian tribe, or a bona fide private club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(e) *Employing office* is defined in the Congressional Accountability Act, 2 U.S.C. 1301(9), to mean the personal office of a Member of the House of Representatives or of a Senator; a committee of the House of Representatives or the Senate or a joint committee; any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the

Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(f) *Employment agency* is defined in 42 U.S.C. 2000e(c) to mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(g) *Joint labor-management committee* is defined as an entity that controls apprenticeship or other training or retraining programs, including on-the-job training programs.

(h) *Labor organization* is defined at 42 U.S.C. 2000e(d) to mean an organization with fifteen or more members engaged in an industry affecting commerce, and any agent of such an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(i) *Member* includes, with respect to a labor organization, an applicant for membership.

(j) *Person* is defined at 42 U.S.C. 2000e(a) to mean one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(k) *State* is defined at 42 U.S.C. 2000e(i) and includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*).

§ 1635.3 Definitions specific to GINA.

(a) *Family member* means with respect to any individual:

(1) A person who is a dependent of that individual as the result of marriage, birth, adoption, or placement for adoption; or

(2) A first-degree, second-degree, third-degree, or fourth-degree relative of the individual, or of a dependent of the individual as defined in § 1635.3(a)(1).

(i) First-degree relatives include an individual's parents, siblings, and children.

(ii) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(iii) Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles/aunts, and first cousins.

(iv) Fourth-degree relatives include an individual's great-great-grandparents, great-great-grandchildren, and first cousins once-removed (i.e., the children of the individual's first cousins).

(b) *Family medical history.* Family medical history means information about the manifestation of disease or disorder in family members of the individual.

(c) *Genetic information.* (1) Genetic information means information about:

(i) An individual's genetic tests;

(ii) The genetic tests of that individual's family members;

(iii) The manifestation of disease or disorder in family members of the individual (family medical history);

(iv) An individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or

(v) The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

(2) Genetic information does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.

(d) *Genetic monitoring* means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, caused by the toxic substances they use or are exposed to in performing their jobs, in order to identify, evaluate, and respond to the effects of, or to control adverse environmental exposures in the workplace.

(e) *Genetic services.* Genetic services means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(f) *Genetic test*—(1) *In general.* "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

(2) Genetic tests include, but are not limited to:

(i) A test to determine whether someone has the BRCA1 or BRCA2 variant evidencing a predisposition to breast cancer, a test to determine whether someone has a genetic variant associated with hereditary nonpolyposis colon cancer, and a test for a genetic variant for Huntington's Disease;

(ii) Carrier screening for adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring;

(iii) Amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus during pregnancy;

(iv) Newborn screening analysis that uses DNA, RNA, protein, or metabolite analysis to detect or indicate genotypes, mutations, or chromosomal changes, such as a test for PKU performed so that treatment can begin before a disease manifests;

(v) Preimplantation genetic diagnosis performed on embryos created using invitro fertilization;

(vi) Pharmacogenetic tests that detect genotypes, mutations, or chromosomal changes that indicate how an individual will react to a drug or a particular dosage of a drug;

(vii) DNA testing to detect genetic markers that are associated with information about ancestry; and

(viii) DNA testing that reveals family relationships, such as paternity.

(3) The following are examples of tests or procedures that are not genetic tests:

(i) An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;

(ii) A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;

(iii) A test for infectious and communicable diseases that may be transmitted through food handling;

(iv) Complete blood counts, cholesterol tests, and liver-function tests.

(4) Alcohol and Drug Testing—

(i) A test for the presence of alcohol or illegal drugs is not a genetic test.

(ii) A test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

(g) *Manifestation* or *manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise

in the field of medicine involved. For purposes of this part, a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information.

§ 1635.4 Prohibited practices—in general.

(a) It is unlawful for an employer to discriminate against an individual on the basis of the genetic information of the individual in regard to hiring, discharge, compensation, terms, conditions, or privileges of employment.

(b) It is unlawful for an employment agency to fail or refuse to refer any individual for employment or otherwise discriminate against any individual because of genetic information of the individual.

(c) It is unlawful for a labor organization to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member.

(d) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs to discriminate against any individual because of the individual's genetic information in admission to, or employment in, any program established to provide apprenticeship or other training or retraining.

§ 1635.5 Limiting, segregating, and classifying.

(a) A covered entity may not limit, segregate, or classify an individual, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive the individual of employment opportunities or otherwise affect the status of the individual as an employee, because of genetic information with respect to the individual. A covered entity will not be deemed to have violated this section if it limits or restricts an employee's job duties based on genetic information because it was required to do so by a law or regulation mandating genetic monitoring, such as regulations administered by the Occupational and Safety Health Administration (OSHA). *See* 1635.8(b)(5) and 1635.11(a).

(b) Notwithstanding any language in this part, a cause of action for disparate impact within the meaning of section 703(k) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2(k), is not available under this part.

§ 1635.6 Causing a covered entity to discriminate.

A covered entity may not cause or attempt to cause another covered entity, or its agent, to discriminate against an individual in violation of this part, including with respect to the individual's participation in an apprenticeship or other training or retraining program, or with respect to a member's participation in a labor organization.

§ 1635.7 Retaliation.

A covered entity may not discriminate against any individual because such individual has opposed any act or practice made unlawful by this title or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

§ 1635.8 Acquisition of genetic information.

(a) *General prohibition.* A covered entity may not request, require, or purchase genetic information of an individual or family member of the individual, except as specifically provided in paragraph (b) of this section. "Request" includes conducting an Internet search on an individual in a way that is likely to result in a covered entity obtaining genetic information; actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and making requests for information about an individual's current health status in a way that is likely to result in a covered entity obtaining genetic information.

(b) *Exceptions.* The general prohibition against requesting, requiring, or purchasing genetic information does not apply:

(1) Where a covered entity inadvertently requests or requires genetic information of the individual or family member of the individual.

(i) Requests for Medical Information:

(A) If a covered entity acquires genetic information in response to a lawful request for medical information, the acquisition of genetic information will not generally be considered inadvertent unless the covered entity directs the individual and/or health care provider from whom it requested medical information (in writing, or verbally, where the covered entity does not typically make requests for medical information in writing) not to provide genetic information.

(B) If a covered entity uses language such as the following, any receipt of genetic information in response to the request for medical information will be deemed inadvertent: "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

(C) A covered entity's failure to give such a notice or to use this or similar language will not prevent it from establishing that a particular receipt of genetic information was inadvertent if its request for medical information was not "likely to result in a covered entity obtaining genetic information" (for example, where an overly broad response is received in response to a tailored request for medical information).

(D) Situations to which the requirements of subsection (b)(1)(i) apply include, but are not limited to the following:

(*1*) Where a covered entity requests documentation to support a request for reasonable accommodation under Federal, State, or local law, as long as the covered entity's request for such documentation is lawful. A request for documentation supporting a request for reasonable accommodation is lawful only when the disability and/or the need for accommodation is not obvious; the documentation is no more than is sufficient to establish that an individual has a disability and needs a reasonable accommodation; and the documentation relates only to the impairment that the individual claims to be a disability that requires reasonable accommodation;

(*2*) Where an employer requests medical information from an individual as required, authorized, or permitted by Federal, State, or local law, such as where an employee requests leave under the Family and Medical Leave Act (FMLA) to attend to the employee's own serious health condition or where an employee complies with the FMLA's employee return to work certification requirements; or

(*3*) Where a covered entity requests documentation to support a request for leave that is not governed by Federal,

State, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the Americans with Disabilities Act and other laws limiting a covered entity's access to medical information.

(ii) The exception for inadvertent acquisition of genetic information also applies in, but is not necessarily limited to, situations where—

(A) A manager, supervisor, union representative, or employment agency representative learns genetic information about an individual by overhearing a conversation between the individual and others;

(B) A manager, supervisor, union representative, or employment agency representative learns genetic information about an individual by receiving it from the individual or third-parties during a casual conversation, including in response to an ordinary expression of concern that is the subject of the conversation. For example, the exception applies when the covered entity, acting through a supervisor or other official, receives family medical history directly from an individual following a general health inquiry (e.g., "How are you?" or "Did they catch it early?" asked of an employee who was just diagnosed with cancer) or a question as to whether the individual has a manifested condition. Similarly, a casual question between colleagues, or between a supervisor and subordinate, concerning the general well-being of a parent or child would not violate GINA (*e.g.,* "How's your son feeling today?", "Did they catch it early?" asked of an employee whose family member was just diagnosed with cancer, or "Will your daughter be OK?"). However, this exception does not apply where an employer follows up a question concerning a family member's general health with questions that are probing in nature, such as whether other family members have the condition, or whether the individual has been tested for the condition, because the covered entity should know that these questions are likely to result in the acquisition of genetic information;

(C) A manager, supervisor, union representative, or employment agency representative learns genetic information from the individual or a third-party without having solicited or sought the information (*e.g.,* where a manager or supervisor receives an unsolicited email about the health of an employee's family member from a co-worker); or

(D) A manager, supervisor, union representative, or employment agency representative inadvertently learns genetic information from a social media platform which he or she was given permission to access by the creator of the profile at issue (*e.g.,* a supervisor and employee are connected on a social networking site and the employee provides family medical history on his page).

(2) Where a covered entity offers health or genetic services, including such services offered as part of a voluntary wellness program.

(i) This exception applies only where—

(A) The provision of genetic information by the individual is voluntary, meaning the covered entity neither requires the individual to provide genetic information nor penalizes those who choose not to provide it;

(B) The individual provides prior knowing, voluntary, and written authorization, which may include authorization in electronic format. This requirement is only met if the covered entity uses an authorization form that:

(*1*) Is written so that the individual from whom the genetic information is being obtained is reasonably likely to understand it;

(*2*) Describes the type of genetic information that will be obtained and the general purposes for which it will be used; and

(*3*) Describes the restrictions on disclosure of genetic information;

(C) Individually identifiable genetic information is provided only to the individual (or family member if the family member is receiving genetic services) and the licensed health care professionals or board certified genetic counselors involved in providing such services, and is not accessible to managers, supervisors, or others who make employment decisions, or to anyone else in the workplace; and

(D) Any individually identifiable genetic information provided under paragraph (b)(2) of this section is only available for purposes of such services and is not disclosed to the covered entity except in aggregate terms that do not disclose the identity of specific individuals (a covered entity will not violate the requirement that it receive information only in aggregate terms if it receives information that, for reasons outside the control of the provider or the covered entity (such as the small number of participants), makes the genetic information of a particular individual readily identifiable with no effort on the covered entity's part).

(ii) Consistent with the requirements of paragraph (b)(2)(i) of this section, a covered entity may not offer a financial inducement for individuals to provide genetic information, but may offer financial inducements for completion of health risk assessments that include questions about family medical history or other genetic information, provided the covered entity makes clear, in language reasonably likely to be understood by those completing the health risk assessment, that the inducement will be made available whether or not the participant answers questions regarding genetic information. For example:

(A) A covered entity offers $150 to employees who complete a health risk assessment with 100 questions, the last 20 of them concerning family medical history and other genetic information. The instructions for completing the health risk assessment make clear that the inducement will be provided to all employees who respond to the first 80 questions, whether or not the remaining 20 questions concerning family medical history and other genetic information are answered. This health risk assessment does not violate Title II of GINA.

(B) Same facts as the previous example, except that the instructions do not indicate which questions request genetic information; nor does the assessment otherwise make clear which questions must be answered in order to obtain the inducement. This health risk assessment violates Title II of GINA.

(iii) A covered entity may offer financial inducements to encourage individuals who have voluntarily provided genetic information (*e.g.,* family medical history) that indicates that they are at increased risk of acquiring a health condition in the future to participate in disease management programs or other programs that promote healthy lifestyles, and/or to meet particular health goals as part of a health or genetic service. However, to comply with Title II of GINA, these programs must also be offered to individuals with current health conditions and/or to individuals whose lifestyle choices put them at increased risk of developing a condition. For example:

(A) Employees who voluntarily disclose a family medical history of diabetes, heart disease, or high blood pressure on a health risk assessment that meets the requirements of (b)(2)(ii) of this section and employees who have a current diagnosis of one or more of these conditions are offered $150 to participate in a wellness program designed to encourage weight loss and a healthy lifestyle. This does not violate Title II of GINA.

(B) The program in the previous example offers an additional

inducement to individuals who achieve certain health outcomes. Participants may earn points toward "prizes" totaling $150 in a single year for lowering their blood pressure, glucose, and cholesterol levels, or for losing weight. This inducement would not violate Title II of GINA.

(iv) Nothing contained in § 1635.8(b)(2)(iii) limits the rights or protections of an individual under the Americans with Disabilities Act (ADA), as amended, or other applicable civil rights laws, or under the Health Insurance Portability and Accountability Act (HIPAA), as amended by GINA. For example, if an employer offers a financial inducement for participation in disease management programs or other programs that promote healthy lifestyles and/or require individuals to meet particular health goals, the employer must make reasonable accommodations to the extent required by the ADA, that is, the employer must make "modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities" unless "such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business." 29 CFR 1630.2(o)(1)(iii); 29 CFR 1630.9(a). In addition, if the employer's wellness program provides (directly, through reimbursement, or otherwise) medical care (including genetic counseling), the program may constitute a group health plan and must comply with the special requirements for wellness programs that condition rewards on an individual satisfying a standard related to a health factor, including the requirement to provide an individual with a "reasonable alternative (or waiver of the otherwise applicable standard)" under HIPAA, when "it is unreasonably difficult due to a medical condition to satisfy" or "medically inadvisable to attempt to satisfy" the otherwise applicable standard. *See* section 9802 of the Internal Revenue Code (26 U.S.C. 9802, 26 CFR 54.9802–1 and 54.9802–3T), section 702 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1182, 29 CFR 2590.702 and 2590.702–1), and section 2705 of the Public Health Service Act (45 CFR 146.121 and 146.122).

(3) Where the covered entity requests family medical history to comply with the certification provisions of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 *et seq.*) or State or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of Federal, State, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave.

(4) Where the covered entity acquires genetic information from documents that are commercially and publicly available for review or purchase, including newspapers, magazines, periodicals, or books, or through electronic media, such as information communicated through television, movies, or the Internet, except that this exception does not apply—

(i) To medical databases, court records, or research databases available to scientists on a restricted basis;

(ii) To genetic information acquired through sources with limited access, such as social networking sites and other media sources which require permission to access from a specific individual or where access is conditioned on membership in a particular group, unless the covered entity can show that access is routinely granted to all who request it;

(iii) To genetic information obtained through commercially and publicly available sources if the covered entity sought access to those sources with the intent of obtaining genetic information; or

(iv) To genetic information obtained through media sources, whether or not commercially and publicly available, if the covered entity is likely to acquire genetic information by accessing those sources, such as Web sites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination.

(5) Where the covered entity acquires genetic information for use in the genetic monitoring of the biological effects of toxic substances in the workplace. In order for this exception to apply, the covered entity must provide written notice of the monitoring to the individual and the individual must be informed of the individual monitoring results. The covered entity may not retaliate or otherwise discriminate against an individual due to his or her refusal to participate in genetic monitoring that is not required by federal or state law. This exception further provides that such monitoring:

(i) Is either required by federal or state law or regulation, or is conducted only where the individual gives prior knowing, voluntary and written authorization. The requirement for individual authorization is only met if the covered entity uses an authorization form that:

(A) Is written so that the individual from whom the genetic information is being obtained is reasonably likely to understand the form;

(B) Describes the genetic information that will be obtained; and

(C) Describes the restrictions on disclosure of genetic information;

(ii) Is conducted in compliance with any Federal genetic monitoring regulations, including any regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*); and

(iii) Provides for reporting of the results of the monitoring to the covered entity, excluding any licensed health care professional or board certified genetic counselor involved in the genetic monitoring program, only in aggregate terms that do not disclose the identity of specific individuals.

(6) Where an employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification and requests or requires genetic information of its employees, apprentices, or trainees, but only to the extent that the genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination and is maintained and disclosed in a manner consistent with such use.

(c) *Inquiries Made of Family Members Concerning a Manifested Disease, Disorder, or Pathological Condition.* (1) A covered entity does not violate this section when it requests, requires, or purchases information about a manifested disease, disorder, or pathological condition of an employee, member, or apprenticeship program participant whose family member is an employee for the same employer, a member of the same labor organization, or a participant in the same apprenticeship program. For example, an employer will not violate this section by asking someone whose sister also works for the employer to take a post-offer medical examination that does not include requests for genetic information.

(2) A covered entity does not violate this section when it requests, requires, or purchases genetic information or

information about the manifestation of a disease, disorder, or pathological condition of an individual's family member who is receiving health or genetic services on a voluntary basis. For example, an employer does not unlawfully acquire genetic information about an employee when it asks the employee's family member who is receiving health services from the employer if her diabetes is under control.

(d) *Medical examinations related to employment.* The prohibition on acquisition of genetic information, including family medical history, applies to medical examinations related to employment. A covered entity must tell health care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job, and must take additional reasonable measures within its control if it learns that genetic information is being requested or required. Such reasonable measures may depend on the facts and circumstances under which a request for genetic information was made, and may include no longer using the services of a health care professional who continues to request or require genetic information during medical examinations after being informed not to do so.

(e) A covered entity may not use genetic information obtained pursuant to subparagraphs (b) or (c) of this section to discriminate, as defined by §§ 1635.4, 1635.5, or 1635.6, and must keep such information confidential as required by § 1635.9.

§ 1635.9 Confidentiality.

(a) *Treatment of genetic information.* (1) A covered entity that possesses genetic information in writing about an employee or member must maintain such information on forms and in medical files (including where the information exists in electronic forms and files) that are separate from personnel files and treat such information as a confidential medical record.

(2) A covered entity may maintain genetic information about an employee or member in the same file in which it maintains confidential medical information subject to section 102(d)(3)(B) of the Americans with Disabilities Act, 42 U.S.C. 12112(d)(3)(B).

(3) Genetic information that a covered entity receives orally need not be reduced to writing, but may not be disclosed, except as permitted by this part.

(4) Genetic information that a covered entity acquires through sources that are commercially and publicly available, as provided by, and subject to the limitations in, 1635.8(b)(4) of this part, is not considered confidential genetic information, but may not be used to discriminate against an individual as described in §§ 1635.4, 1635.5, or 1635.6 of this part.

(5) Genetic information placed in personnel files prior to November 21, 2009 need not be removed and a covered entity will not be liable under this part for the mere existence of the information in the file. However, the prohibitions on use and disclosure of genetic information apply to all genetic information that meets the statutory definition, including genetic information requested, required, or purchased prior to November 21, 2009.

(b) *Exceptions to limitations on disclosure.* A covered entity that possesses any genetic information, regardless of how the entity obtained the information (except for genetic information acquired through commercially and publicly available sources), may not disclose it except:

(1) To the employee or member (or family member if the family member is receiving the genetic services) about whom the information pertains upon receipt of the employee's or member's written request;

(2) To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under 45 CFR part 46;

(3) In response to an order of a court, except that the covered entity may disclose only the genetic information expressly authorized by such order; and if the court order was secured without the knowledge of the employee or member to whom the information refers, the covered entity shall inform the employee or member of the court order and any genetic information that was disclosed pursuant to such order;

(4) To government officials investigating compliance with this title if the information is relevant to the investigation;

(5) To the extent that such disclosure is made in support of an employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws; or

(6) To a Federal, State, or local public health agency only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, provided that the individual whose family member is the subject of the disclosure is notified of such disclosure.

(c) *Relationship to HIPAA Privacy Regulations.* Pursuant to § 1635.11(d) of this part, nothing in this section shall be construed as applying to the use or disclosure of genetic information that is protected health information subject to the regulations issued pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

§ 1635.10 Enforcement and remedies.

(a) *Powers and procedures:* The following powers and procedures shall apply to allegations that Title II of GINA has been violated:

(1) The powers and procedures provided to the Commission, the Attorney General, or any person by sections 705 through 707 and 709 through 711 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–4 through 2000e–6 and 2000e–8 through 2000e–10, where the alleged discrimination is against an employee defined in 1635.2(c)(1) of this part or against a member of a labor organization;

(2) The powers and procedures provided to the Commission and any person by sections 302 and 304 of the Government Employees Rights Act, 42 U.S.C. 2000e–16b and 2000e–16c, and in regulations at 29 CFR part 1603, where the alleged discrimination is against an employee as defined in § 1635.2(c)(2) of this part;

(3) The powers and procedures provided to the Board of Directors of the Office of Compliance and to any person under the Congressional Accountability Act, 2 U.S.C. 1301 *et seq.* (including the provisions of Title 3 of that act, 2 U.S.C. 1381 *et seq.*), where the alleged discrimination is against an employee defined in § 1635.2(c)(3) of this part;

(4) The powers and procedures provided in 3 U.S.C. 451 *et seq.,* to the President, the Commission, or any person in connection with an alleged violation of section 3 U.S.C. 411(a)(1), where the alleged discrimination is against an employee defined in § 1635.2(c)(4) of this part;

(5) The powers and procedures provided to the Commission, the Librarian of Congress, and any person by section 717 of the Civil Rights Act, 42 U.S.C. 2000e–16, where the alleged discrimination is against an employee defined in § 1635.2(c)(5) of this part.

(b) *Remedies.* The following remedies are available for violations of GINA sections 202, 203, 204, 205, 206, and 207(f):

(1) Compensatory and punitive damages as provided for, and limited by, 42 U.S.C. 1981a(a)(1) and (b);

(2) Reasonable attorney's fees, including expert fees, as provided for, and limited by, 42 U.S.C. 1988(b) and (c); and

(3) Injunctive relief, including reinstatement and hiring, back pay, and other equitable remedies as provided for, and limited by, 42 U.S.C. 2000e–5(g).

(c) *Posting of Notices.* (1) Every covered entity shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this regulation and information pertinent to the filing of a complaint.

(2) A willful violation of this requirement shall be punishable by a fine of not more than $100 for each separate offense.

§ 1635.11 Construction.

(a) *Relationship to other laws, generally.* This part does not—

(1) Limit the rights or protections of an individual under any other Federal, State, or local law that provides equal or greater protection to an individual than the rights or protections provided for under this part, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), and State and local laws prohibiting genetic discrimination or discrimination on the basis of disability;

(2) Apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(3) Limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(4) Limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research in compliance with the regulations and protections provided for under 45 CFR part 46;

(5) Limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations; or

(6) Require any specific benefit for an employee or member or a family member of an employee or member (such as additional coverage for a particular health condition that may have a genetic basis) under any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan.

(b) *Relation to certain Federal laws governing health coverage.* (1) *General:* Nothing in GINA Title II provides for enforcement of, or penalties for, violation of any requirement or prohibition of a covered entity subject to enforcement under:

(i) Amendments made by Title I of GINA.

(ii) Section 701(a) of the Employee Retirement Income Security Act (29 U.S.C. 1181) (ERISA), section 2704(a) of the Public Health Service Act, and section 9801(a) of the Internal Revenue Code (26 U.S.C. 9801(a)), as such sections apply with respect to genetic information pursuant to section 701(b)(1)(B) of ERISA, section 2704(b)(1)(B) of the Public Health Service Act, and section 9801(b)(1)(B) of the Internal Revenue Code, respectively, of such sections, which prohibit a group health plan or a health insurance issuer in the group market from imposing a preexisting condition exclusion based solely on genetic information, in the absence of a diagnosis of a condition;

(iii) Section 702(a)(1)(F) of ERISA (29 U.S.C. 1182(a)(1)(F)), section 2705(a)(6) of the Public Health Service Act, and section 9802(a)(1)(F) of the Internal Revenue Code (26 U.S.C. 9802(a)(1)(F)), which prohibit a group health plan or a health insurance issuer in the group market from discriminating against individuals in eligibility and continued eligibility for benefits based on genetic information; or

(iv) Section 702(b)(1) of ERISA (29 U.S.C. 1182(b)(1)), section 2705(b)(1) of the Public Health Service Act, and section 9802(b)(1) of the Internal Revenue Code (26 U.S.C. 9802(b)(1)), as such sections apply with respect to genetic information as a health status-related factor, which prohibit a group health plan or a health insurance issuer in the group market from discriminating against individuals in premium or contribution rates under the plan or coverage based on genetic information.

(2) *Application.* The application of paragraph (b)(1) of this section is intended to prevent Title II causes of action from being asserted regarding matters subject to enforcement under Title I or the other genetics provisions for group coverage in ERISA, the Public Health Service Act, and the Internal Revenue Code. The firewall seeks to ensure that health plan or issuer provisions or actions are addressed and remedied through ERISA, the Public Health Service Act, or the Internal Revenue Code, while actions taken by employers and other GINA Title II covered entities are remedied through GINA Title II. Employers and other GINA Title II covered entities would remain liable for any of their actions that violate Title II, even where those actions involve access to health benefits, because such benefits are within the definition of compensation, terms, conditions, or privileges of employment. For example, an employer that fires an employee because of anticipated high health claims based on genetic information remains subject to liability under Title II. On the other hand, health plan or issuer provisions or actions related to the imposition of a preexisting condition exclusion; a health plan's or issuer's discrimination in health plan eligibility, benefits, or premiums based on genetic information; a health plan's or issuer's request that an individual undergo a genetic test; and/or a health plan's or issuer's collection of genetic information remain subject to enforcement under Title I exclusively. For example:

(i) If an employer contracts with a health insurance issuer to request genetic information, the employer has committed a Title II violation. In addition, the issuer may have violated Title I of GINA.

(ii) If an employer directs his employees to undergo mandatory genetic testing in order to be eligible for health benefits, the employer has committed a Title II violation.

(iii) If an employer or union amends a health plan to require an individual to undergo a genetic test, then the employer or union is liable for a violation of Title II. In addition, the health plan's implementation of the requirement may subject the health plan to liability under Title I.

(c) *Relationship to authorities under GINA Title I.* GINA Title II does not prohibit any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan from engaging in any action that is authorized under any provision of law noted in § 1635.11(b) of this part, including any implementing regulations noted in § 1635.11(b).

(d) *Relationship to HIPAA Privacy Regulations.* This part does not apply to genetic information that is protected health information subject to the regulations issued by the Secretary of Health and Human Services pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

§ 1635.12 Medical information that is not genetic information.

(a) *Medical information about a manifested disease, disorder, or pathological condition.* (1) A covered entity shall not be considered to be in violation of this part based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, even if the disease, disorder, or pathological condition has or may have a genetic basis or component.

(2) Notwithstanding paragraph (a)(1) of this section, the acquisition, use, and disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition is subject to applicable limitations under sections 103(d)(1)–(4) of the Americans with Disabilities Act (42 U.S.C. 12112(d)(1)–(4)), and regulations at 29 CFR 1630.13, 1630.14, and 1630.16.

(b) *Genetic information related to a manifested disease, disorder, or pathological condition.* Notwithstanding paragraph (a) of this section, genetic information about a manifested disease, disorder, or pathological condition is subject to the requirements and prohibitions in sections 202 through 206 of GINA and §§ 1635.4 through 1635.9 of this part.

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