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WHEN: Tuesday, March 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–10–0081; FV10–930–4 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2010–2011 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages under the tart cherry marketing order for the 2010–2011 crop year. The percentages are 58 percent free and 42 percent restricted and will establish the proportion of cherries from the 2010 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* February 26, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; *telephone:* (301) 734–5245, *Fax:* (301) 734–5275; *E-mail: Kenneth.Johnson@ams.usda.gov.*

Small businesses may request information on complying with this regulation 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 final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2010–2011 crop year, beginning July 1, 2010, through June 30, 2011.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for the 2010–2011 crop year are: District two-Central Michigan; District three-Southern Michigan; District four-New York; District seven-Utah; District eight-Washington; and District nine-Wisconsin. Districts one, five, and six (Northern Michigan, Oregon, and Pennsylvania, respectively) are not regulated for the 2010–2011 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon and Pennsylvania, handlers in those districts are not subject to volume regulation during the 2010–2011 crop year. Section 930.52 of the order also provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years is exempt from volume regulation. Thus, Northern Michigan is also not subject to volume regulation for the 2010–2011 crop year because its 2010 crop production was less than 50 percent of its 5-year average production due to weather related crop damage.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates

substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast or from an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted tonnage. The restricted tonnage is then divided by the sum of the crop estimates for the regulated districts to obtain a preliminary restricted percentage for the regulated districts. The preliminary free percentage is the difference between the restricted percentage and 100 percent. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 17, 2010, and computed, for the 2010–2011 crop year, an optimum supply of 170 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 195 million pounds; a 51 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 170 million pounds which resulted in the 2010–2011 poundage requirements (adjusted optimum supply) of 119 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory at the beginning of the 2010–2011 crop year. Subtracting the adjusted optimum supply of 119 million pounds from the USDA crop estimate, (195 million pounds) resulted in a surplus of 76 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (191 million pounds) and resulted in a restricted percentage of 40 percent for the 2010–2011 crop year. The free percentage was 60 percent (100 percent minus 40 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2010–2011 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	170
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	170
Preliminary Percentages:	
(4) USDA crop estimate	195
(5) Carryin held by handlers as of July 1, 2009	51
(6) Adjusted optimum supply for current crop year	119
(7) Surplus	76
(8) USDA crop estimate for regulated districts	191

	Percentages	
	Free	Restricted
(9) Preliminary percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	60	40

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry. No later than September 15, the Board must recommend final free and restricted percentages to the Secretary.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage and 100 percent is the final restricted percentage.

The Board met on September 10, 2010, to recommend final free and restricted percentages. The actual production reported by the Board was 189 million pounds, which is a 6 million pound decrease from the USDA crop estimate of 195 million pounds.

The Board also recommended an economic adjustment of 20 million pounds to be subtracted from the surplus to adjust the supply for the poor quality and yields due to adverse harvest conditions in various parts of the production area. Handlers stated that processing yields from the 2010 tart cherry harvest were significantly lower this year than in previous years. The lower yields resulted in processors using more raw tart cherries than usual

to produce a given amount of finished product.

A 51 million pound carryin (based on handler reports) was subtracted from the optimum supply of 170 million pounds which resulted in the 2010–2011 poundage requirements (adjusted optimum supply) of 119 million pounds. Subtracting the adjusted optimum supply of 119 million pounds from the actual production of 189 million pounds results in a surplus of 70 million pounds of tart cherries. An economic adjustment of 20 million pounds was subtracted from the surplus, resulting in an adjusted surplus of 50 million pounds of tart cherries. The adjusted surplus of 50 million pounds was divided by the production in the regulated districts (120 million pounds) and resulted in a restricted percentage of 42 percent for the 2010–2011 crop year. The free percentage was 58 percent (100 percent minus 42 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2010–2011 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	170
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	170
Final Percentages:	
(4) Board reported production	189
(5) Carryin held by handlers as of July 1, 2010	51
(6) Adjusted optimum supply	119
(7) Surplus (item 4 minus item 6)	70
(8) Economic adjustment	20
(9) Adjusted surplus (item 7 minus item 8)	50
(10) Production in regulated districts	120

	Percentages	
	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	58	42

The USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a final percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are available for free use by such handler. Approximately 17 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2008/09, approximately 85 percent of the U.S. tart cherry crop, or 222.7 million pounds, was processed annually. Of the 222.7 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 35,550 acres in 2009/10. This represents a 29 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2010/11 crop is 189 million pounds. This production level is 6 million pounds less than the 195.3 million pounds estimated by the National Agricultural Statistics Service (NASS) in June. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers

ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased supplies to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The two districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 120 million pounds. A 42 percent restriction means 70 million pounds is available to be shipped to primary markets from these five states. Production levels of 65.3 million pounds for Northwest Michigan, 1.2 million pounds for Oregon, and 2.2 million pounds for Pennsylvania (the unregulated areas in 2010/11), result in an additional 69 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 17 million pounds being available for the primary market. The 70 million pounds from the two Michigan districts, Utah, Washington, Wisconsin, and New York, the 69 million pounds from the other producing states, the 17 million pound release, and the 51 million pound carryin inventory gives a total of 207 million pounds being available for the primary markets.

The econometric model is used to estimate the impact of establishing a reserve pool for this year's crop. With the volume controls, grower prices are estimated to be approximately $0.12 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenue from processed cherries is estimated to be $23 million higher than without restrictions. The without-restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 42 percent volume control would not unduly burden producers, particularly smaller growers. The 42 percent restriction would be applied to the growers in two districts in Michigan, New York, Utah, Washington, and Wisconsin. The growers in the other unregulated areas covered under the marketing order will benefit from this restriction.

Recent grower prices have been as high as $0.44 per pound in 2002–03 when there was a crop failure. Prices in the last two crop years have been $0.372 in 2008–09 and $0.194 per pound in 2009–10. At current production levels, yield is estimated at approximately 10,251 pounds per acre. At this level of yield the cost of production is estimated to be $0.25 per pound (costs were estimated by representatives of Michigan State University with input provided by growers for the current

crop). The grower price for 2010–11 will likely be less than $0.25 per pound for the combined free and restricted production. Thus, this year's grower price even with regulation is estimated to be below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0036 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2010–2011 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2010 of the free and restricted percentages proposed to be established by this rule (58 percent free and 42 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members believed that no volume regulation would be detrimental to the tart cherry industry.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 10, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

A proposed rule concerning this action was published in the **Federal Register** on December 13, 2010 (75 FR 77564). Copies of the rule were mailed or sent via facsimile to all Board members and alternates. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 12, 2011, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping tart cherries from the 2010–2011 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also a 30-day comment period was provided for in the proposed rule. No comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.256 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.256 Final free and restricted percentages for the 2010–2011 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2010, which shall be free and restricted, respectively, are designated as follows: Free percentage, 58 percent and restricted percentage, 42 percent.

Dated: February 18, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4269 Filed 2–24–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 1023

48 CFR Parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952

RIN 1991–AB81

(General Provisions) Contract Appeals and the Acquisition Regulation: General, Acquisition Planning, and Contracting Methods and Contract Types

Correction

In rule document 2011–1320 appearing on pages 7685–7694 in the issue of Friday, February 11, 2011, make the following correction:

915.404 [Table Corrected]

On page 7693, in the table, in the last row, in the column labeled "Add", ""DOE to"" should read ""DOE to—"".

[FR Doc. C1–2011–1320 Filed 2–24–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM412 Special Conditions No. 25–419–SC]

Special Conditions: Boeing Model 787–8 Airplane; Overhead Crew-Rest Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features associated with installation of an overhead crew-rest (OCR) compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: *Effective Date:* March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2003, The Boeing Commercial Airplane Group (hereafter referred to as "Boeing") applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The company applied for an extension of time for the type certificate on March 9, 2009, and was granted that extension on March 13, 2009. The Boeing Model 787–8 airplane will be an all-new, two-engine, jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger capacity of 381.

Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Boeing must show that the Boeing Model 787–8 airplane (hereafter referred to as "the 787") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, 25–120, 25–124, 25–125 and 25–128, except that § 25.1309 remains at Amendment 25–117 for cargo-fire protection systems. If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

Crew-rest compartments have been installed and certificated on several Boeing airplane models in locations as varied as the main passenger-seating area, the overhead space above the main passenger-cabin seating area, and below the passenger-cabin seating area within the cargo compartment. In each case, the Administrator has determined that the applicable regulations (*i.e.,* 14 CFR part 25) did not provide all of the necessary requirements because each installation had unique features by virtue of its design, location, and use on the airplane. The special conditions contain safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Most recently for the Boeing Model 777 series airplanes, the FAA has issued Special Conditions No. 25–230–SC, dated April 9, 2003, for crew-rest compartments allowed to be occupied by crewmembers and flight crewmembers during flight, and Special Conditions No. 25–260–SC, dated April 14, 2004, for crew-rest compartments allowed to be occupied by crewmembers and flight crewmembers during TT&L, as well as during flight.

The OCR compartment on the 787 identified by Boeing as an overhead flight-attendant rest is located above the main passenger cabin, adjacent to Door 4, and will be accessed from the main deck by stairs through a vestibule. This OCR compartment will contain six private berths, an emergency hatch that opens directly into the main passenger-cabin area, a smoke-detection system, an oxygen system, and various occupant amenities. This OCR compartment will only be occupied by trained crewmembers in flight. It will not be

occupied during taxi, takeoff, or landing.

This 787 OCR compartment is unique to part 25 because of its design, location, and use on the airplane.

Because of the novel or unusual features associated with installation of this compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations.

These special conditions do not negate the need to address other applicable part 25 regulations.

Discussion of Comments

Notice of proposed special conditions 25–09–08–SC for the Boeing Model 787 series airplanes was published in the **Federal Register** on January 4, 2010. No comments were received, and these special conditions are adopted as proposed.

Operational Evaluations and Approval

These special conditions outline requirements for OCR-compartment design approvals administered by the FAA's Aircraft Certification Service. Before operational use of an OCR compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the compartment for crew occupation. Additionally, if an operator wishes to use an OCR compartment as "sleeping quarters," the compartment must undergo an additional evaluation and approval (reference 14 CFR 121.485(a), 121.523(b), and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

To obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of its OCR compartment. The results of these evaluations should be documented in a 787 flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OCR compartment configuration that affect crewmember emergency egress, or any other procedures affecting safety of the occupying crewmembers or related emergency training, will require re-evaluation and approval. The applicant for an OCR compartment design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new compartment evaluation is required. The results of a re-evaluation should also be documented in a 787 FSB report appendix.

Procedures must be developed to ensure that a crewmember entering the OCR compartment through the stairway/vestibule to fight a fire will examine the stairway/vestibule and the adjacent galley or lavatory areas (if installed) for the source of the fire before entering the remaining areas of the compartment. This is intended to ensure that the source of the fire is not between the crewmember and the entrance to the OCR compartment. If a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, will not be between the firefighter and his or her way to get out of the compartment. Procedures describing methods for searching the OCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Discussion of Special Conditions

These special conditions initially apply to an OCR compartment installed adjacent to the Door 4 exits on the 787. These special conditions supplement 14 CFR part 25. Except as noted below, these special conditions for the 787 closely resemble Boeing 777 Special Conditions No. 25–230–SC.

Special Conditions 4 and 14 contain requirements for the exit signs that must be provided in the OCR compartment. Symbols that satisfy the equivalent level of safety finding established for the 787 may be used in lieu of the text required by § 25.812(b)(1)(i). The FAA expects that crewmembers will learn the meaning of any symbolic exit sign as a part of their training in evacuation procedures.

Special Condition 13 contains requirements for supplemental oxygen systems. Special Conditions No. 25–260–SC, for the overhead flightcrew rest compartments, required that each berth be provided with two oxygen masks. This was intended to address the case where a person not in a berth was moving around in the crew-rest compartment and needed quick access to the oxygen. For the designs used in the model 777, this requirement was sufficient. However, for the 787, the requirement to have two masks per berth may not always meet the objective of having masks available to persons who are in transition within the compartment. Therefore, the wording of this special condition has been modified to better state the objective rather than specify that two masks be provided per berth. In addition, the requirement to have adequate illumination to retrieve the mask, while implied previously, is made explicit in these special conditions.

Special Condition 17 contains the requirement for materials used in the construction of the OCR compartment and states that § 25.853 as amended by Amendment 25–116 is the appropriate regulation. Amendment 25–116 is the latest amendment level for § 25.853.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification-basis requirements. One particular area of concern is that installation of OCR compartments changes the compartment volume in the overhead area of the airplane. The applicant must comply with the pressurized compartment loads requirements of § 25.365(e), (f), and (g) for the OCR compartment, as well as for any other airplane compartments whose decompression characteristics are affected by the installation of an OCR compartment. Compliance with § 25.813 emergency exit access requirements must be demonstrated for all phases of flight during which occupants will be present.

Section 25.813(e) prohibits installation of interior doors between passenger compartments, but the FAA has historically found crew rest-compartment doors to be acceptable, because crew rests are not passenger compartments. Special Conditions 1 and 14 provide requirements for crew rest-compartment doors which are considered to provide an appropriate level of safety to OCR compartment occupants.

Sections 25.1443. 25.1445, and 25.1447 describe oxygen requirements for flightcrew, passengers, and cabin attendants. Crewmembers occupying the OCR compartment are not on duty, and therefore are considered passengers in determining compliance with these oxygen regulations.

Applicability

As discussed above, these special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplanes with an overhead crew-rest (OCR) compartment installed above the main passenger cabin adjacent to an exit door.

1. Occupancy of the OCR compartment is limited to the total number of installed bunks and seats in each compartment. An approved seat or berth, able to withstand the maximum flight loads when occupied for each occupant permitted in the OCR compartment, must be available. Maximum occupancy in the OCR compartment is six crewmembers during flight.

(a) Appropriate placards must be located inside and outside each entrance to the OCR compartment to indicate:

(1) The maximum number of occupants allowed during flight.

(2) Occupancy is restricted to crewmembers who are trained in the evacuation procedures for the OCR compartment.

(3) Occupancy is prohibited during taxi, take-off, and landing.

(4) Smoking is prohibited in the OCR compartment.

(5) Stowage in the OCR compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) At least one ashtray must be located on both the inside and the outside of any entrance to the OCR compartment.

(c) A limitation in the airplane flight manual must be established to restrict occupancy to crewmembers the pilot in command has determined to be both trained in the emergency procedures for the OCR compartment and able to rapidly use the evacuation routes of the OCR compartment.

(d) A means must be in place for any door installed between the OCR compartment and the passenger cabin to be quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed in the OCR compartment, a means must be in place to preclude anyone from being trapped inside the OCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the OCR compartment at any time.

(f) The means of opening doors and hatches to the OCR compartment must be simple and obvious. The OFCR compartment doors and hatches must be able to be closed from the main passenger cabin. Doors or hatches that separate the overhead crew-rest compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

2. At least two emergency evacuation routes must be available and which could be used by each occupant of the OCR compartment to rapidly evacuate to the main cabin. These evacuation routes must be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OCR compartment to minimize the possibility of an event either inside or outside of the crew-rest compartment rendering both routes inoperative.

Compliance with requirements of Special Condition 2(a) may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between crew-rest compartment outlets is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with Special Condition 2(a). An inspection finding that an OCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the crew-rest compartment outlets, regardless of the location of a fire, would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, crew rest-compartment outlets that are located at absolute opposite ends (i.e., adjacent to opposite end walls) of the OCR compartment would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show that the OCR compartment configuration and interior features allow all occupants of the OCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the OCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

(2) Design elements used to reduce fire-ignition sources in the OCR compartment.

(3) Distribution and quantity of emergency equipment within the OCR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.,* seats, folding berths, contents of stowage compartments, *etc.*).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat-back break-over, rigid structure that reduces access from one part of the compartment to another, and items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards; availability of communications equipment; supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation; and load-path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OCR compartment. The location and quantity of PBE equipment and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OCR compartment.

The intent of this special condition is to provide sufficient exit-route separation. Therefore, the exit-separation analysis described above should not be used to approve OCR-compartment outlets that have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For an OCR compartment with one outlet located near the forward or aft end of the compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total OCR-compartment length), the outlet separation from one outlet to the other should not be less than 50 percent of the total OCR-compartment length.

For OCR compartments with neither required OCR-compartment outlet located near the forward or aft end of the compartment (as measured by not having the centroid of either outlet opening within 20 percent of the forward or aft end of the total OCR-compartment length), the outlet separation from one outlet to the other should not be less than 30 percent of the total OCR-compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the crew-rest compartment outlets. One of the two OCR evacuation routes should not be located where, during times when occupancy is allowed, normal movement by passengers occurs (*i.e.,* main aisle, cross aisle or galley complex, for example) that would impede egress from the OCR compartment. If an evacuation route is in an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If low headroom is at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OCR compartment from head injury. Use of evacuation routes must not depend on any powered device. If an OCR-compartment outlet is over an area of passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the process of evacuating an incapacitated person(s). If such an evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including procedures for emergency evacuation of an incapacitated occupant from the OCR compartment, must be established. The applicant must transmit all of these procedures to the operator for incorporation into its training programs and appropriate operational manuals.

(d) A limitation must be included in the airplane flight manual or other suitable means to require that crewmembers are trained in the use of the OCR-compartment evacuation routes.

3. A means must be available for evacuating an incapacitated person (representative of a 95th percentile male) from the OCR compartment to the passenger cabin floor.

(a) Such an evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the OCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes with stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OCR compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the OCR compartment and they must meet the following criteria:

(a) At least one exit sign, located near each OCR compartment outlet, meeting the emergency lighting requirements of § 25.812(b)(1)(i). One allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters would be acceptable. Another allowable exception is a sign with a symbol that the FAA has determined to be equivalent for use as an exit sign in an OCR compartment.

(b) An appropriate placard located conspicuously on or near each OCR-compartment door or hatch that defines the location and the operating instructions for access to and operation of the outlet door or hatch.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The door or hatch handles and operating-instruction placards required by Special Condition 4(b) of these special conditions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. A means must be available, in the event of failure of the aircraft's main power system, or of the normal OCR compartment lighting system, for emergency illumination to be automatically provided for the OCR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient to allow occupants of the OCR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the OCR compartment to locate a deployed oxygen mask.

6. A means must be available for two-way voice communications between crewmembers on the flight deck and occupants of the OCR compartment. Two-way communications must also be available between occupants of the OCR compartment and each flight attendant station in the passenger cabin required per § 25.1423(g) to have a public-address-system microphone. In addition, the public-address system must include provisions to provide only the relevant information to the crewmembers in the OCR compartment (*e.g.,* fire in flight, aircraft depressurization, preparation of the compartment occupants for landing, etc.).

7. A means must be available for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor-level emergency exits to alert occupants of the OCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, for a period of at least ten minutes.

8. A means, readily detectable by seated or standing occupants of the OCR compartment, must be in place to indicate when seat belts should be fastened. If the OCR compartment has no seats, at least one means must be provided to cover anticipated turbulence (*e.g.,* sufficient handholds). Seatbelt-type restraints must be provided for berths and must be compatible for the sleeping position during cruise conditions. A placard on each berth must require that these

restraints be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head position, a placard must identify that head position.

9. In lieu of the requirements specified in § 25.1439(a) pertaining to isolated compartments, and to provide a level of safety equivalent to that provided to occupants of an isolated galley, the following equipment must be provided in the OCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) Two PBE devices suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. All PBE devices must be approved to Technical Standard Order (TSO)–C116 or equivalent.

(c) One flashlight.

Note: Additional PBE devices and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition 9, may be required as a result of the egress analysis accomplished to satisfy Special Condition 2(a).

10. A smoke- or fire-detection system (or systems) must be provided that monitors each occupiable area within the OCR compartment, including those areas partitioned by curtains or doors. Flight tests must be conducted to show compliance with this requirement. If a fire occurs, each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire.

(b) An aural warning in the OCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

11. A means to fight a fire must be provided. This can be either a built-in extinguishing system or a manual, hand-held extinguishing system.

(a) For a built-in extinguishing system:

(1) The system must have adequate capacity to suppress a fire considering the fire threat, volume of the compartment, and the ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards that have been established for the agent being used. In addition, certification flight testing will verify the acceptable duration that the suppression environment can be maintained.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

(i) Enter the OCR compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

(ii) Check for and extinguish any residual fire.

(iii) Confirm that the fire is out.

(b) For a manual, hand-held extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OCR:

(1) A limitation must be included in the airplane flight manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the compartment.

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OCR compartment must not exceed the time it would take for the compartment to become filled with smoke, thus making it difficult to locate the fire source.

(4) Approved procedures describing methods for searching the OCR compartment for fire source(s) must be established. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

12. A means must be provided to prevent hazardous quantities of smoke or extinguishing agent originating in the OCR compartment from entering any other occupiable compartment.

(a) Small quantities of smoke may penetrate from the OCR compartment into other occupied areas during the one-minute smoke detection time.

(b) A provision in the firefighting procedures must ensure that all doors and hatches at the OCR compartment outlets are closed after evacuation of the compartment and during firefighting to minimize smoke and extinguishing agent entering other occupiable compartments.

(c) Smoke entering any occupiable compartment when access to the OFCR compartment is open for evacuation must dissipate within five minutes after the access to the OFCR compartment is closed.

(d) Hazardous quantities of smoke may not enter any occupied compartment during access to manually fight a fire in the OCR compartment. The amount of smoke entrained by a firefighter exiting the OCR compartment is not considered hazardous.

(e) Flight tests must be conducted to show compliance with this requirement.

13. A supplemental oxygen system within the OCR compartment must provide the following:

(a) At least one mask for each seat and berth in the OCR compartment.

(b) If a destination area (such as a changing area) is provided in the OCR compartment, an oxygen mask must be readily available for each occupant who can reasonably be expected to be in the destination area (with the maximum number of required masks within the destination area being limited to the placarded maximum occupancy of the OFCR compartment).

(c) An oxygen mask must be readily accessible to each occupant who can reasonably be expected to be moving from the main cabin into the OCR compartment, moving around within the OCR compartment, or moving from the OCR compartment to the main cabin.

(d) The system must provide an aural and visual alert to warn occupants of the OCR compartment to don oxygen masks in the event of decompression. The aural and visual alerts must activate concurrently with deployment of the oxygen masks in the passenger cabin. To compensate for sleeping occupants, the aural alert must be heard in each section of the OCR compartment and must sound continuously for a minimum of five minutes or until a reset switch within the OCR compartment is activated. A visual alert that informs occupants that they must don an oxygen mask must be visible in each section.

(e) A means must be in place by which oxygen masks can be manually deployed from the flight deck.

(f) Approved procedures must be established for OCR occupants in the event of decompression. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(g) The supplemental oxygen system for the OCR compartment must meet the

same 14 CFR part 25 regulations as the supplemental oxygen system for the passenger cabin occupants except for the 10 percent additional masks requirement of 14 CFR 25.1447(c)(1).

(h) The illumination level of the normal OCR compartment-lighting system must automatically be sufficient for each occupant of the compartment to locate a deployed oxygen mask.

14. The following additional requirements apply to OCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OCR compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(b) For each section of the OCR compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No-smoking placard requirement (Special Condition 1).

(2) Emergency illumination requirement (Special Condition 5).

(3) Emergency alarm-system requirement (Special Condition 7).

(4) Seatbelt-fasten signal or return-to-seat signal as applicable requirement (Special Condition 8).

(5) Smoke- or fire-detection system requirement (Special Condition 10).

(6) Oxygen-system requirement (Special Condition 13).

(c) OCR compartments that are visually divided to the extent that evacuation could be affected must have exit signs directing occupants to the primary stairway outlet. The exit signs must be provided in each separate section of the OCR compartment, except for curtained bunks, and must meet requirements of § 25.812(b)(1)(i). An exit sign with reduced background area or a symbolic exit sign, as described in Special Condition 4(a), may be used to meet this requirement.

(d) For sections within an OCR compartment created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) A secondary evacuation route from each section to the main deck, or alternatively, the applicant must show that any door between the sections has been designed to preclude anyone from being trapped inside a section of the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short time duration, such as a changing area or lavatory, is not required, but removal of an incapacitated occupant from within such a small room must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) No more than one door may be located between any seat or berth and the primary stairway door.

(4) In each section, exit signs meeting requirements of § 25.812(b)(1)(i), or shown to have an equivalent level of safety, must direct occupants to the primary stairway outlet. An exit sign with reduced background area or a symbolic exit sign, as described in Special Condition 4(a), may be used to meet this requirement.

(5) Special Conditions 1 (no-smoking placards), 5 (emergency illumination), 7 (emergency alarm system), 8 (fasten-seatbelt signal or return-to-seat signal as applicable), 10 (smoke- or fire-detection system), and 13 (oxygen system) must be met with the door open or closed.

(6) Special Conditions 6 (two-way voice communication) and 9 (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

15. If a waste-disposal receptacle is fitted in the OCR compartment, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

16. Materials (including finishes or decorative surfaces applied to the materials) must comply with flammability requirements of § 25.853(a) as amended by Amendment 25–116. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c) as amended by Amendment 25–116 and the test requirements of part 25, appendix F, part II, or other equivalent methods.

17. The addition of a lavatory within the OCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition 10 for smoke detection.

18. Each stowage compartment in the OCR compartment, except for underseat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OCR compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment (*i.e.,* bedding) must meet the design criteria described in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition. The in-flight accessibility of very large, enclosed, stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand-held fire-extinguishing system will require additional fire-protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 cubic feet to less than 57 cubic feet	57 cubic feet to 200 cubic feet
Compliant Materials of Construction [1].	Yes	Yes	Yes.
Smoke or Fire Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT—Continued

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 cubic feet to less than 57 cubic feet	57 cubic feet to 200 cubic feet
Fire Location Detector [4]	No	Yes	Yes.

[1] Compliant Materials of Construction: The material used in constructing each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.,* 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft.^{3} in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] Smoke or Fire Detectors: Enclosed stowage compartments equal to or exceeding 25 ft.^{3} in interior volume must be provided with a smoke- or fire-detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire.

(b) An aural warning in the OFCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

[3] Liner: If material used in constructing the stowage compartment can be shown to meet the flammability requirements of a liner for a Class B cargo compartment (*i.e.,* § 25.855 at Amendment 25–116, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft.^{3} but less than 57 ft.^{3} in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft.^{3} in interior volume but less than or equal to 200 ft.^{3}, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] Fire Location Detector: If an OFCR compartment has enclosed stowage compartments exceeding 25 ft.^{3} interior volume that are located separately from the other stowage compartments (located, for example, away from one central location, such as the entry to the OFCR compartment or a common area within the OFCR compartment, where the other stowage compartments are), that OFCR compartment would require additional fire-protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on February 15, 2011.

K.C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM411; Special Conditions No. 25–418–SC]

Special Conditions: Boeing Model 787–8 Airplane; Overhead Flightcrew-Rest Compartment Occupiable During Taxi, Takeoff, and Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features associated with an overhead flightcrew-rest (OFCR) compartment, which is proposed to be occupiable during taxi, takeoff, and landing (TT&L). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: *Effective Date:* March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2003, The Boeing Commercial Airplane Group (hereafter referred to as "Boeing") applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The company applied for an extension of time for the type certificate on March 9, 2009, and was granted that extension on March 13, 2009. The Boeing Model 787–8 airplane will be an all-new, two-engine, jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger capacity of 381.

Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Boeing must show that the Boeing Model 787–8 airplane (hereafter referred to as "the 787") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, 25–120, 25–124, 25–125 and 25–128, except that § 25.1309 remains at Amendment 25–117 for cargo-fire protection systems. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

Flightcrew rest compartments have been installed and certificated on several Boeing airplane models in locations as varied as the main passenger seating area, the overhead space above the main passenger-cabin

seating area, and below the passenger-cabin seating area within the cargo compartment. In each case, the Administrator has determined that the applicable regulations (*i.e.,* 14 CFR part 25) did not provide all of the necessary requirements because each installation had unique features by virtue of its design, location, and use on the airplane. The special conditions contain safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Most recently for the Boeing Model 777 series airplanes, the FAA has issued Special Conditions No. 25–230–SC, dated April 9, 2003, for crew-rest compartments allowed to be occupied by crewmembers and flight crewmembers during flight, and Special Conditions No. 25–260–SC, dated April 14, 2004, for crew-rest compartments allowed to be occupied by crewmembers and flight crewmembers during TT&L, as well as during flight.

For the 787, an OFCR compartment is located in the overhead space above the main passenger cabin seating area immediately aft of the first pair of main deck emergency exits (Door 1). This compartment includes two private berths and up to two seats. Occupancy of the compartment will be limited to a maximum of four trained crewmembers during flight and two trained flight crewmembers, one in each seat, during TT&L. Stairs through a vestibule access the compartment from the main deck. In addition, a secondary evacuation route, which opens directly into the main passenger-seating area, will be available as an alternate for evacuating occupants of the compartment. A smoke detection system and an oxygen system will be provided in the compartment. Other optional features, such as a sink with cold-drink stowage or a lavatory, may be provided as well.

This 787 OFCR compartment is unique because of its design, location, and use on the airplane. It is also unique because it is in the overhead area of the passenger compartment and is proposed to be occupied by trained flightcrew during TT&L.

Because of the novel or unusual features associated with installation of this OFCR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations.

These special conditions do not negate the need to address applicable part 25 regulations.

Discussion of Comments

Notice of proposed special conditions 25–09–07–SC for the Boeing Model 787 series airplanes was published in the **Federal Register** on January 4, 2010. No comments were received, and these special conditions are adopted as proposed.

Consideration of a Requirement for an External Exit

For Boeing Model 777 Special Conditions No. 25–260–SC, the FAA considered whether or not a special condition should require that the OFCR compartment have an external exit leading directly outside the airplane. The Air Line Pilots Association, International (ALPA), and International Federation of Air Line Pilots (IFALPA) reviewed the design of the 777 OFCR compartment and informed the FAA that in their opinion an external exit was not needed because two independent, internal evacuation routes were provided. That input, and the fact that flight crewmembers would be the only occupants of the compartment during TT&L, supported the FAA in determining that a special condition requiring an external exit was not required. The FAA considers that the following, in addition to Special Conditions No. 25–260–SC, provide a level of safety equivalent to that established by part 25 for main-deck occupants:

1. The distances along the evacuation routes from the seats in the OFCR compartment to the Door 1 exits on the main deck are significantly shorter than the maximum distance a seated passenger on the main deck would need to travel to reach an exit.

2. Occupancy during TT&L will be limited to two flight crewmembers trained in the evacuation, fire fighting, and depressurization procedures of the OFCR compartment. An airplane-flight-manual limitation must be established to restrict occupancy to only persons the pilot in command has determined are able to use both evacuation routes rapidly. The ability of such persons to fit through the escape hatch must be considered in this determination.

For the reasons noted above, the FAA does not believe that this special condition should require that the 787 OFCR compartment have an external exit.

Operational Evaluations and Approval

These special conditions establish requirements for OFCR-compartment design approvals administered by the FAA's Aircraft Certification Service. Before operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the compartment for crew occupation. Additionally, if an operator wishes to use an OFCR compartment as "sleeping quarters," the compartment must undergo an additional evaluation and approval (reference 14 CFR 121.485(a), 121.523(b), and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

To obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of its OFCR compartment. The results of these evaluations should be documented in a 787 flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that affect crewmember emergency egress, or any other procedures affecting safety of the occupying crewmembers or related emergency training, will require re-evaluation and approval. The applicant for an OFCR compartment design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new compartment evaluation is required. The results of a re-evaluation should also be documented in a 787 FSB report appendix.

Procedures must be developed to ensure that a crewmember, acting as firefighter, entering the OFCR compartment through the stairway/vestibule to fight a fire, will examine the stairway/vestibule and the adjacent galley or lavatory areas (if installed) for the source of the fire before entering the remaining areas of the compartment. This is intended to ensure that the source of the fire is not between the crewmember and the entrance to the OFCR compartment. If a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OFCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, will not be between the firefighter and his or her way to get out of the compartment. Procedures describing methods for searching the

OFCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Discussion of Rescue-Crew Training Materials

Installation of an OFCR compartment that can be occupied during TT&L by flightcrew is unusual. Appropriate information must be provided to airport fire-rescue personnel so that they understand that this remote compartment may be occupied during an emergency landing. The applicant must provide rescue-crew training materials to the local FAA Airports Division, Safety and Standards Branch, to address this issue. The FAA Airports Division, Safety and Standards Branch, will ensure that these materials are distributed to appropriate airports, domestic and foreign. A special condition is not considered appropriate to address this issue.

Discussion of the Special Conditions

These special conditions apply to OFCR compartments that are occupiable during TT&L and are installed immediately aft of the Door 1 exits on the 787. These special conditions supplement 14 CFR part 25. Except as noted below, these special conditions for the 787 are identical to Boeing Model 777 Special Conditions No. 25–260–SC.

Special Conditions 6 and 16 contain requirements for the exit signs that must be provided in the OFCR compartment. Symbols that satisfy the equivalent level of safety finding established for the 787 may be used in lieu of the text required by § 25.812(b)(1)(i). The FAA expects that the meaning of any symbolic exit sign will be reinforced as a part of crewmember training in evacuation procedures.

Special Condition 15 contains requirements for supplemental oxygen systems. Special Conditions No. 25–260–SC required that each berth be provided with two oxygen masks. This was intended to address the case where a person not in a berth was moving around within the flightcrew rest compartment and needed quick access to the oxygen. For the designs used in the model 777, this requirement was sufficient. However, for the 787, the requirement to have two masks per berth may not always meet the objective of having masks available to persons who are in transition within the compartment. Therefore, the wording of this special condition has been modified to better state the objective rather than specifying a two-masks-per-berth requirement. In addition, the requirement to have adequate illumination to retrieve the mask, while implied previously, is made explicit in these special conditions.

Special Condition 18 contains the requirements for materials used in the construction of the OFCR compartment. Special Conditions No. 25–260–SC stated that § 25.853 as amended by Amendment 25–83 is the appropriate regulation. Section 25.853 has since been further amended, and these special conditions reference the latest amendment level for § 25.853, Amendment 25–116.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification-basis requirements. One particular area of concern is that installation of OFCR compartments changes the compartment volume in the overhead area of the airplane. The applicant must comply with the pressurized compartment loads requirements of § 25.365(e), (f), and (g) for the OFCR compartment, as well as for any other airplane compartments whose decompression characteristics are affected by the installation of an OFCR compartment. Compliance with § 25.813 emergency exit access requirements must be demonstrated for all phases of flight during which occupants will be present.

The configuration includes a seat installed adjacent to the OFCR compartment exit which will be occupiable during TT&L. It should be noted that the emergency landing conditions requirements of §§ 25.561(d) and 25.562(c)(8)apply to this configuration. Deformations resulting from required static and dynamic structural tests must not impede rapid evacuation of the OFCR compartment occupants. Seat deformations must not prevent opening of the secondary escape hatch or rapid evacuation through the secondary escape route.

Section 25.785(h)(2) mandates that the flight attendant seats required by the operating rules be located in a position that provides a direct view of the cabin area for which the flight attendant is responsible. Since the OFCR compartment will be occupied only by trained crewmembers, the FAA does not consider this requirement applicable to the seating area in the OFCR compartment.

Section 25.787(a) requires each stowage compartment in the passenger cabin, except for underseat and overhead stowage compartments for passenger convenience, to be completely enclosed. This requirement does not apply to the flight deck, because flight crewmembers must be able to quickly access items to better perform their duties. Flight crewmembers occupying the OFCR compartment will not be performing flight deck duties however. Therefore, stowage compartments in the OFCR compartment, except for underseat compartments for occupant convenience, should be completely enclosed. This will provide occupants of the OFCR compartment a similar level of safety to that provided to passengers on the main deck. Special Condition 20 contains this requirement.

Section 25.811(c) requires that means be provided to assist occupants in locating the exits in conditions of dense smoke. Section 25.812(e) requires floor proximity emergency escape path marking to provide guidance for passengers when all sources of illumination above 4 feet from the cabin aisle floor are totally obscured. The FAA considers that the current OFCR compartment design is sufficient in regard to these regulations. The two OFCR compartment seats are only a couple of steps away from the stairway and once a trained flight crewmember is at the top of the stairway, the stairway itself will guide him/her to the main deck. Once the crewmember is on the main deck, floor proximity lighting and exit marker signs, which are less than 4 feet above the floor, are provided.

Section 25.813(e) prohibits installation of interior doors between passenger compartments, but the FAA has historically found flightcrew rest-compartment doors to be acceptable, because flightcrew rest compartments are not passenger compartments. Special Conditions 2 and 16 provide requirements for flightcrew rest-compartment doors which are considered to provide an appropriate level of safety to OFCR compartment occupants.

Sections 25.1443, 25.1445, and 25.1447 describe oxygen requirements for flightcrew, passengers, and cabin attendants. Flight crewmembers occupying the OFCR compartment are not on duty, and therefore are considered passengers in determining compliance with these oxygen regulations.

Applicability

As discussed above, these special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplanes with an OFCR compartment installed adjacent to or immediately aft of the first pair of exits (Door 1).

1. During flight, occupancy of the OFCR compartment is limited to the total number of installed bunks and seats in the compartment, and that are approved to the maximum flight-loading conditions. During TT&L, occupancy of the OFCR compartment is limited to the total number of installed seats approved for the flight- and ground-load conditions, and emergency-landing conditions. Therefore, the OFCR compartment is limited to a maximum of four crewmembers during flight, and two flight crew members during TT&L.

(a) Appropriate placards must be located inside and outside each entrance to the OFCR compartment to indicate:

(1) The maximum number of crewmembers allowed during flight and the maximum number of flight crewmembers allowed during TT&L.

(2) Occupancy is restricted to crewmembers the pilot in command has determined to be both trained in the emergency procedures for the OFCR compartment and able to rapidly use the evacuation routes.

(3) Smoking is prohibited in the OFCR compartment.

(4) Stowage in the OFCR compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) At least one ashtray must be located on both the inside and the outside of any entrance to the OFCR compartment.

(c) A limitation in the airplane flight manual must be established to restrict occupancy to crewmembers the pilot in command has determined to be both trained in the emergency procedures for the OFCR compartment and able to rapidly use the evacuation routes of the OFCR compartment.

2. The following requirements are applicable to OFCR compartment door(s):

(a) A means for any door installed between the OFCR compartment and the passenger cabin to be quickly opened from inside the OFCR compartment, even when crowding from an emergency evacuation occurs at each side of the door.

(b) Doors installed across emergency egress routes must have a means to latch them in the open position. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b).

(c) A placard must be displayed in a conspicuous place on the outside of the entrance door of the OFCR compartment, and on any other door(s) installed across emergency egress routes of the OFCR compartment, requiring those doors to be latched open during TT&L when the OFCR compartment is occupied.

(1) This requirement does not apply to emergency-escape hatches installed in the floor of the OFCR compartment.

(2) A placard must be displayed in a conspicuous place on the outside of the entrance door to the OFCR compartment that requires it to be closed and locked when it is not occupied.

(3) Procedures for meeting these requirements must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(d) For all doors installed in the OFCR compartment, a means must be in place to preclude anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the OFCR compartment at any time.

3. In addition to the requirements of § 25.562 for seats, which are occupiable during takeoff and landing, and restraint systems, the OFCR compartment structure must be compatible with the loads imposed by the seats as a result of the conditions specified in § 25.562(b).

4. At least two emergency evacuation routes must be available and which could be used by each occupant of the OFCR compartment to rapidly evacuate to the main cabin. These evacuation routes must be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFCR compartment to minimize the possibility of an event either inside or outside of the OFCR compartment rendering both routes inoperative.

Compliance with requirements of Special Condition 4(a) may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between flightcrew-rest compartment exits is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with Special Condition 4(a). An inspection finding that an OFCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the OFCR compartment exits, regardless of the location of a fire, would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, flightcrew rest-compartment exits that are located at opposite ends (i.e., adjacent to opposite end walls) of the OFCR compartment would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show that the OFCR compartment configuration and interior features allow all occupants of the OFCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the OFCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

(2) Design elements used to reduce fire-ignition sources in the OFCR compartment.

(3) Distribution and quantity of emergency equipment within the OFCR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (e.g., seats, folding berths, contents of stowage compartments, etc).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat deformations (reference §§ 25.561(d) and 25.562(c)(8)), seat-back break-over, rigid structure that reduces access from one part of the compartment to another, and

items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards; availability of communications equipment; supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation; and load-path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OFCR compartment. The location and quantity of PBE equipment and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OFCR compartment.

The intent of this special condition is to provide sufficient exit-route separation. Therefore, the exit-separation analysis described above should not be used to approve OFCR-compartment exits that have less physical separation (measured between the centroid of each outlet opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For an OFCR compartment with one outlet located near the forward or aft end of the compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total OFCR-compartment length), the outlet separation from one outlet to the other should not be less than 50 percent of the total OFCR-compartment length.

For OFCR compartments with neither required flightcrew rest-compartment outlet located near the forward or aft end of the compartment (as measured by not having the centroid of either outlet opening within 20 percent of the forward or aft end of the total OFCR-compartment length), the outlet separation from one outlet to the other should not be less than 30 percent of the total OFCR-compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the flightcrew-rest compartment outlets. One of the two OFCR compartment outlets should not be located where normal movement or evacuation by passengers occurs (main aisle, cross aisle, or galley complex, for example) that would impede egress from the OFCR compartment. If an evacuation route is in an area where normal movement or evacuation of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If low headroom is at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OFCR compartment from head injury. Use of evacuation routes must not depend on any powered device. If an OFCR-compartment outlet is over an area of passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the process of evacuating an incapacitated person(s). If such an evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including procedures for emergency evacuation of an incapacitated occupant from the OFCR compartment, must be established. The applicant must transmit all of these procedures to the operator for incorporation into its training programs and appropriate operational manuals.

(d) A limitation must be included in the airplane flight manual or other suitable means to require that crewmembers are trained in the use of the OFCR-compartment evacuation routes. This training must instruct them to ensure that the OFCR compartment (including seats, doors, etc.) is in its proper TT&L configuration during TT&L.

(e) In the event no flight attendant is present in the area around the door to the OFCR compartment, and also during an emergency, including an emergency evacuation, a means must be available to prevent passengers on the main deck from entering the OFCR compartment.

(f) Doors or hatches separating the OFCR compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

(g) The means of opening doors and hatches to the OFCR compartment must be simple and obvious. The OFCR compartment doors and hatches must be able to be closed from the main passenger cabin.

5. A means must be available for evacuating an incapacitated person (representative of a 95th percentile male) from the OFCR compartment to the passenger cabin floor.

(a) Such an evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the OFCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes with stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

6. The following signs and placards must be provided in the OFCR compartment and they must meet the following criteria:

(a) At least one exit sign, located near each OFCR compartment outlet, meeting the emergency lighting requirements of § 25.812(b)(1)(i). One allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters would be acceptable. Another allowable exception is a sign with a symbol that the FAA has determined to be equivalent for use as an exit sign in an OFCR compartment.

(b) An appropriate placard located conspicuously on or near each OFCR-compartment door or hatch that defines the location and the operating instructions for access to and operation of the outlet door or hatch.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The door or hatch handles and operating-instruction placards required by Special Condition 6(b) of these special conditions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

7. A means must be available, in the event of failure of the aircraft's main power system, or of the normal OFCR compartment lighting system, for emergency illumination to be automatically provided for the OFCR compartment.

(a) This emergency illumination must be powered independently of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient to allow occupants of the OFCR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the OFCR compartment to locate a deployed oxygen mask.

8. A means must be available for two-way voice communications between crewmembers on the flight deck and occupants of the OFCR compartment. Two-way communications must also be available between occupants of the OFCR compartment and each flight attendant station in the passenger cabin that is required per § 25.1423(g) to have a public-address-system microphone. In addition, the public-address system must include provisions to provide only the relevant information to the crewmembers in the OFCR compartment (*e.g.,* fire in flight, aircraft depressurization, preparation of the compartment for landing, *etc.*). That is, provisions must be made so that occupants of the OFCR compartment will not be disturbed with normal, non-emergency announcements made to the passenger cabin.

9. A means must be available for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor-level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, for a period of at least ten minutes.

10. A means, readily detectable by seated or standing occupants of the OFCR compartment, must be in place to indicate when seat belts should be fastened. Seatbelt-type restraints must be provided for berths and must be compatible with the sleeping position during cruise conditions. A placard on each berth must require that these restraints be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head position, a placard must identify that head position.

11. In lieu of the requirements specified in § 25.1439(a) pertaining to isolated compartments, and to provide a level of safety equivalent to that provided to occupants of an isolated galley, the following equipment must be provided in the OFCR compartment:

(a) At least one approved, hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) Two PBE devices suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. All PBE devices must be approved to Technical Standard Order (TSO)–C116 or equivalent.

(c) One flashlight.

Note: Additional PBE devices and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition 11, may be required as a result of the egress analysis accomplished to satisfy Special Condition 4(a).

12. A smoke- or fire-detection system (or systems) must be provided that monitors each occupiable space within the OFCR compartment, including those areas partitioned by curtains or doors. Flight tests must be conducted to show compliance with this requirement. If a fire occurs, each system (or systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire.

(b) An aural warning in the OFCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

13. A means to fight a fire must be provided. This can be either a built-in extinguishing system or a manual, hand-held extinguishing system.

(a) For a built-in extinguishing system:

(1) The system must have adequate capacity to suppress a fire considering the fire threat, volume of the compartment, and the ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards that have been established for the agent being used. In addition, certification flight testing will verify the acceptable duration that the suppression environment can be maintained.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

(i) Enter the OFCR compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

(ii) Check for and extinguish any residual fire.

(iii) Confirm that the fire is out.

(b) For a manual, hand-held extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OFCR compartment:

(1) A limitation must be included in the airplane flight manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The OFCR compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the OFCR compartment.

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OFCR compartment must not exceed the time it would take for the compartment to become filled with smoke, thus making it difficult to locate the fire source.

(4) Approved procedures describing methods for searching the OFCR compartment for fire source(s) must be established. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

14. A means must be provided to prevent hazardous quantities of smoke or extinguishing agent originating in the OFCR compartment from entering any other occupiable compartment.

(a) Small quantities of smoke may penetrate from the OFCR compartment into other occupied areas during the one-minute smoke detection time.

(b) A provision in the firefighting procedures must ensure that all doors and hatches at the OFCR compartment outlets are closed after evacuation of the compartment and during firefighting to minimize smoke and extinguishing agent entering other occupiable compartments.

(c) All smoke entering any occupiable compartment when access to the OFCR compartment is open for evacuation must dissipate within five minutes after the access to the OFCR compartment is closed.

(d) Hazardous quantities of smoke may not enter any occupied compartment during access to manually fight a fire in the OFCR compartment. The amount of smoke entrained by a firefighter exiting the OFCR compartment is not considered hazardous.

(e) Flight tests must be conducted to show compliance with this requirement.

15. A supplemental oxygen system within the OFCR compartment must provide the following:

(a) At least one mask for each seat and berth in the OFCR compartment.

(b) If a destination area (such as a changing area) is provided in the OFCR compartment, an oxygen mask must be readily available for each occupant who can reasonably be expected to be in the destination area (with the maximum number of required masks within the destination area being limited to the placarded maximum occupancy of the OFCR compartment).

(c) An oxygen mask must be readily accessible to each occupant who can reasonably be expected to be moving from the main cabin into the OFCR compartment, moving around within the OFCR compartment, or moving from the OFCR compartment to the main cabin.

(d) The system must provide an aural and visual alert to warn occupants of the OFCR compartment to don oxygen masks in the event of decompression. The aural and visual alerts must activate concurrently with deployment of the oxygen masks in the passenger cabin. To compensate for sleeping occupants, the aural alert must be heard in each section of the OFCR compartment and must sound continuously for a minimum of five minutes or until a reset switch within the OFCR compartment is activated. A visual alert that informs occupants that they must don an oxygen mask must be visible in each section.

(e) A means must be in place by which oxygen masks can be manually deployed from the flight deck.

(f) Approved procedures must be established for OFCR occupants in the event of decompression. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(g) The supplemental oxygen system for the OFCR compartment must meet the same 14 CFR part 25 regulations as the supplemental oxygen system for the passenger cabin occupants except for the 10 percent additional masks requirement of 14 CFR 25.1447(c)(1).

(h) The illumination level of the normal OFCR compartment-lighting system must automatically be sufficient for each occupant of the compartment to locate a deployed oxygen mask.

16. The following additional requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) A placard is required adjacent to each curtain that visually divides or separates, for example, for privacy purposes, the OFCR compartment into multiple sections. The placard must require that the curtain(s) remains open when the section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private section and, therefore, does not require a placard.

(b) For each section of the OFCR compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No-smoking placard requirement (Special Condition 1).

(2) Emergency illumination requirement (Special Condition 7).

(3) Emergency alarm-system requirement (Special Condition 9).

(4) Seatbelt-fasten signal or return-to-seat signal as applicable requirement (Special Condition 10).

(5) Smoke- or fire-detection system requirement (Special Condition 12).

(6) Oxygen-system requirement (Special Condition 15).

(c) OFCR compartments that are visually divided to the extent that evacuation could be adversely affected must have exit signs directing occupants to the primary stairway outlet. The exit signs must be provided in each separate section of the OFCR compartment, except for curtained bunks, and must meet requirements of § 25.812(b)(1)(i). An exit sign with reduced background area or a symbolic exit sign, as described in Special Condition 6(a), may be used to meet this requirement.

(d) For sections within an OFCR compartment created by the installation of a rigid partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) A secondary evacuation route from each section to the main deck, or the applicant must show that any door between the sections precludes anyone from being trapped inside a section of the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short time duration, such as a changing area or lavatory, is not required, but removal of an incapacitated occupant from within such a small room must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) No more than one door may be located between any seat or berth and the primary stairway door.

(4) In each section, exit signs meeting requirements of § 25.812(b)(1)(i), or shown to have an equivalent level of safety, must direct occupants to the primary stairway outlet. An exit sign with reduced background area or a symbolic exit sign, as described in Special Condition 6(a), may be used to meet this requirement.

(5) Special Conditions 1 (no-smoking placards), 7 (emergency illumination), 9 (emergency alarm system), 10 (fasten-seatbelt signal or return-to-seat signal as applicable), 12 (smoke- or fire-detection system), and 15 (oxygen system) must be met with the OFCR compartment door open or closed.

(6) Special Conditions 8 (two-way voice communication) and 11 (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

17. If a waste-disposal receptacle is fitted in the OFCR compartment, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

18. Materials (including finishes or decorative surfaces applied to the materials) must comply with flammability requirements of § 25.853 as amended by Amendment 25–116. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c) as amended by Amendment 25–116 and the test requirements of part 25, appendix F, part II, or other equivalent methods.

19. The addition of a lavatory within the OFCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition 12 for smoke detection.

20. Each stowage compartment in the OFCR compartment, except for underseat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OFCR compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment (*i.e.,* bedding) must meet the design criteria described in the table below. Enclosed stowage compartments greater than 200

ft.^{3} in interior volume are not addressed by this special condition. The in-flight accessibility of very large, enclosed, stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand-held fire-extinguishing system will require additional fire-protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 cubic feet to less than 57 cubic feet	57 cubic feet to 200 cubic feet
Compliant Materials of Construction [1].	Yes	Yes	Yes.
Smoke or Fire Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.
Fire Location Detector [4]	No	Yes	Yes.

[1] Compliant Materials of Construction: The material used in constructing each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (i.e., 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft.^{3} in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] Smoke or Fire Detectors: Enclosed stowage compartments equal to or exceeding 25 ft.^{3} in interior volume must be provided with a smoke- or fire-detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire.

(b) An aural warning in the OFCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

[3] Liner: If material used in constructing the stowage compartment can be shown to meet the flammability requirements of a liner for a Class B cargo compartment (*i.e.,* § 25.855 at Amendment 25–116, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft.^{3} but less than 57 ft.^{3} in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft.^{3} in interior volume but less than or equal to 200 ft.^{3}, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] Fire Location Detector: If an OFCR compartment has enclosed stowage compartments exceeding 25 ft.^{3} interior volume that are located separately from the other stowage compartments (located, for example, away from one central location, such as the entry to the OFCR compartment or a common area within the OFCR compartment, where the other stowage compartments are), that OFCR compartment would require additional fire-protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on February 15, 2011.

K.C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4228 Filed 2–24–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. SW025; Special Conditions No. 27–025–SC]

Special Conditions: Bell Helicopter Textron Canada Limited Model 407 Helicopter, Installation of a Hoh Aeronautics, Inc. Autopilot/ Stabilization Augmentation System (AP/SAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the modification of the Bell Helicopter Textron Canada Limited (Bell) model 407 helicopter. This model helicopter will have novel or unusual design features when modified by installing the Hoh Aeronautics, Inc. (Hoh) complex Autopilot/Stabilization Augmentation System (AP/SAS) that has potential failure conditions with more severe adverse consequences than those envisioned by the existing applicable airworthiness regulations. These special conditions contain the added safety standards the Administrator considers necessary to ensure the failures and their effects are sufficiently analyzed and contained.

DATES: The effective date of these special conditions is February 14, 2011. We must receive your comments by April 26, 2011.

ADDRESSES: You must mail your comments to: Federal Aviation Administration, Rotorcraft Directorate, *Attn:* Rules Docket (ASW–111), Docket No. SW025, 2601 Meacham Blvd., Fort Worth, Texas 76137. You may deliver your comments to the Rotorcraft Directorate at the indicated address. You must mark your comments: Docket No. SW025. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m., in the Rotorcraft Directorate.

FOR FURTHER INFORMATION CONTACT: Mark Wiley, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5134; facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process previously with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective on issuance.

Comments Invited

While we did not precede this with a notice of proposed special conditions, we invite interested people to take part in this action by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any

recommended change, and include supporting data.

We will file in the special conditions docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your mailed comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 16, 2009, Hoh submitted an application to the FAA's Los Angeles Aircraft Certification Office (LA ACO) for a supplemental type certification (STC) to install an AP/SAS on a Bell model 407 helicopter. The Bell model 407 helicopter is a 14 CFR part 27 Normal category, single turbine engine, conventional helicopter designed for civil operation. This helicopter model is capable of carrying six passengers with one pilot, and has a maximum gross weight of approximately 5,250 pounds, depending on the configuration. The major design features include a 4-blade, soft-in-plane main rotor, a 2-blade anti-torque tail rotor, a skid landing gear, and a visual flight rule (VFR) basic avionics configuration. Hoh proposes to modify a model 407 Bell helicopter by installing a two-axis AP/SAS.

Type Certification Basis

Under 14 CFR 21.115, Hoh must show that the Bell model 407 helicopter, as modified by the installed AP/SAS, continues to meet the 14 CFR 21.101 standards. The baseline of the certification basis for the unmodified Bell model 407 helicopter is listed in Type Certificate Number H2SW. Additionally, compliance must be shown to any applicable equivalent level of safety findings, exemptions, and special conditions, prescribed by the Administrator as part of the certification basis.

If the Administrator finds the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this STC, do not contain adequate or appropriate safety standards for the Bell model 407 helicopter because of a novel or unusual design feature, special conditions are prescribed under § 21.101(d).

In addition to the applicable airworthiness regulations and special conditions, Hoh must show compliance of the AP/SAS STC-altered Bell model 407 helicopter with the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Hoh AP/SAS incorporates novel or unusual design features, for installation in a Bell model 407 helicopter, Type Certificate Number H2SW. This AP/SAS performs non-critical control functions, since this model helicopter has been certificated to meet the applicable requirements independent of this system. However, the possible failure conditions for this system, and their effect on continued safe flight and landing of the helicopter, are more severe than those envisioned by the present rules.

Discussion

The effect on safety is not adequately covered under § 27.1309 for the application of new technology and new application of standard technology. Specifically, the present provisions of § 27.1309(c) do not adequately address the safety requirements for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions, or for complex systems whose failures could result in major failure conditions.

To comply with the provisions of the special conditions, we require that Hoh provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by the functional hazard assessment (FHA) and the preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This must ensure that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers (SAE) document Aerospace Recommended Practice (ARP) 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment).

These special conditions require that the AP/SAS installed on a Bell model 407 helicopter meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Applicability

These special conditions are applicable to the Hoh AP/SAS installed as an STC approval, in Bell model 407 helicopter, Type Certificate Number H2SW.

Conclusion

This action affects only certain novel or unusual design features for a Hoh AP/SAS STC installed on one model helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of these special conditions has been subjected to the notice and comment period previously and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

List of Subjects in 14 CFR Part 27

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

Authority: 42 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the Hoh Aeronautics, Inc. (Hoh) supplemental type certificate basis for the installation of an autopilot/stability augmentation system (AP/SAS) on the Bell Helicopter Textron Canada Limited (Bell) model

407 helicopter, Type Certificate Number H2SW.

The AP/SAS must be designed and installed so that the failure conditions identified in the Functional Hazard Assessment and verified by the System Safety Assessment, after design completion, are adequately addressed in accordance with the "failure condition categories" and "requirements" sections (including the system design integrity, design environmental, and test and analysis requirements) of these special conditions.

Failure Condition Categories Failure conditions are classified, according to the severity of their effects on the rotorcraft, into one of the following categories:

1. *No Effect*—Failure conditions that would have no effect on safety; for example, failure conditions that would not affect the operational capability of the rotorcraft or increase crew workload; however, could result in an inconvenience to the occupants, excluding the flight crew.

2. *Minor*—Failure conditions which would not significantly reduce rotorcraft safety, and which would involve crew actions that are well within their capabilities. Minor failure conditions would include, for example, a slight reduction in safety margins or functional capabilities, a slight increase in crew workload, such as, routine flight plan changes, or result in some physical discomfort to occupants.

3. *Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be, for example, a significant reduction in safety margins or functional capabilities, a significant increase in crew workload or result in impairing crew efficiency, physical distress to occupants, including injuries, or physical discomfort to the flight crew.

4. *Hazardous/Severe-Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be:

- A large reduction in safety margins or functional capabilities;
- Physical distress or excessive workload that would impair the flight crew's ability to the extent that they could not be relied on to perform their tasks accurately or completely; or,
- Possible serious or fatal injury to a passenger or a cabin crewmember, excluding the flight crew.

Note 1: "Hazardous/severe-major" failure conditions can include events that are manageable by the crew by the use of proper procedures, which, if not implemented correctly or in a timely manner, may result in a catastrophic event.

5. *Catastrophic*—Failure conditions which would result in multiple fatalities to occupants, fatalities or incapacitation to the flight crew, or result in loss of the rotorcraft.

The present §§ 27.1309(b) and (c) regulations do not adequately address the safety requirements for systems whose failures could result in "catastrophic" or "hazardous/severe-major" failure conditions, or for complex systems whose failures could result in "major" failure conditions. The current regulations are inadequate because when §§ 27.1309(b) and (c) were promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in "catastrophic" or "hazardous/severe-major" effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

Hoh must provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by the functional hazard assessment (FHA) and the preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This will show that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS.

Note 2: The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers (SAE) document Aerospace Recommended Practice (ARP) 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment).

Requirements

Hoh must comply with the existing requirements of § 27.1309 for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "no effect," and "minor," and for non-complex systems whose failure condition category is classified as "major." Hoh must comply with the requirements of these special conditions for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "catastrophic" and "hazardous severe/major," and for complex systems whose failure condition category is classified as "major."

A complex system is a system whose operations, failure conditions, or failure effects are difficult to comprehend without the aid of analytical methods (for example, FTA, Failure Modes and Effect Analysis, FHA).

System Design Integrity Requirements

Each of the failure condition categories defined in these special conditions relate to the corresponding aircraft system integrity requirements. The system design integrity requirements, for the Hoh AP/SAS, as they relate to the allowed probability of occurrence for each failure condition category, and the proposed software design assurance level, are as follows:

- "Major"—For systems with "major" failure conditions, failures resulting in these major effects must be shown to be remote, a probability of occurrence on the order of between 1×10^{-5} to 1×10^{-7} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level C software design assurance level.
- "Hazardous/Severe-Major"—For systems with "hazardous/severe-major" failure conditions, failures resulting in these hazardous/severe-major effects must be shown to be extremely remote, a probability of occurrence on the order of between 1×10^{-7} to 1×10^{-9} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems and Equipment Certification) Level B software assurance level.
- "Catastrophic"—For systems with "catastrophic" failure conditions, failures resulting in these catastrophic effects must be shown to be extremely improbable, a probability of occurrence on the order of 1×10^{-9} failures/hour or less, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems and Equipment Certification) Level A design assurance level.

System Design Environmental Requirements

The AP/SAS system equipment must be qualified to the appropriate environmental level per RTCA document DO–160F (Environmental Conditions and Test Procedures for Airborne Equipment), for all relevant aspects. This is to show that the AP/SAS system performs its intended function under any foreseeable operating condition, which includes the expected environment in which the AP/

SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the AP/SAS equipment installation.The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

Test & Analysis Requirements

Compliance with the requirements of these special conditions may be shown by a variety of methods, which typically consist of analysis, flight tests, ground tests, and simulation, as a minimum. Compliance methodology is related to the associated failure condition category. If the AP/SAS is a complex system, compliance with the requirements for failure conditions classified as "major" may be shown by analysis, in combination with appropriate testing to validate the analysis. Compliance with the requirements for failure conditions classified as "hazardous/severe-major" may be shown by flight-testing in combination with analysis and simulation, and the appropriate testing to validate the analysis. Flight tests may be limited for "hazardous/severe-major" failure conditions and effects due to safety considerations. Compliance with the requirements for failure conditions classified as "catastrophic" may be shown by analysis, and appropriate testing in combination with simulation to validate the analysis. Very limited flight tests in combination with simulation are used as a part of a showing of compliance for "catastrophic" failure conditions. Flight tests are performed only in circumstances that use operational variations, or extrapolations from other flight performance aspects to address flight safety.

These special conditions require that the Hoh AP/SAS system installed on a Bell model 407 helicopter, Type Certificate Number H2SW, meet these requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined system design integrity requirements.

Issued in Fort Worth, Texas, on February 14, 2011.

Kimberly K. Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–4229 Filed 2–24–11; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–13–001; Order No. 741–A]

Credit Reforms in Organized Wholesale Electric Markets

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: In this order on rehearing, the Commission reaffirms in part its determinations in *Credit Reforms in Organized Wholesale Electric Markets,* Order No. 741, to amend its regulations to improve the management of risk and use of credit in the organized wholesale electric markets. This order denies in part and grants in part rehearing and clarification regarding certain provisions of Order No. 741.

DATES: Effective Date: This order will become effective on March 28, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Order on Rehearing

1. In Order No. 741, the Commission adopted reforms to credit policies used in organized wholesale electric power markets.[1] In the instant order, the Commission addresses requests for rehearing of Order No. 741. The Commission grants rehearing as to its establishment of a $100 million corporate family cap on unsecured credit and extends the deadline for complying with the requirement regarding the ability to offset market obligations to September 30, 2011, with the relevant tariff revisions to take effect January 1, 2012, but denies rehearing in all other respects, as discussed below.

I. Background

2. As noted in Order No. 741, the Commission must ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential,[2] and clear and consistent credit policies are an important element in ensuring rates that are just, reasonable, and not unduly discriminatory or preferential. The management of risk and credit requires a balance between protecting the markets from costly defaults [3] and ensuring that barriers to entry for market participants are not prohibitive.

3. The Commission provided guidance to the industry on appropriate credit policies in Order No. 888 [4] and the *Policy Statement on Electric Creditworthiness*.[5] Credit policies among the organized wholesale electric markets, however, developed in an incremental manner leading to varying credit practices. Because these variable practices posed a heightened risk to the stability of the organized wholesale electric markets, and especially in light of recent events in the financial markets, the Commission proposed that the different credit practices among the organized wholesale electric markets be strengthened.

4. In Order No. 741, the Commission directed the regional transmission organizations (RTO) and independent system operators (ISO) to revise their tariffs to reflect the following reforms: implementation of shortened settlement timeframes, restrictions on the use of unsecured credit, elimination of unsecured credit in all financial transmission rights (FTR) or equivalent markets,[6] adoption of steps to address

[1] *Credit Reforms in Organized Wholesale Electric Markets,* Order No. 741, 75 FR 65942 (Oct. 21, 2010), FERC Stats. & Regs. ¶ 31,317 (2010) (Order No. 741).

[2] 16 U.S.C. 824d, 824e.

[3] In organized wholesale electric markets, defaults not supported by collateral are typically socialized among all other market participants.

[4] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,937 (1996) (*pro forma* OATT, section 11 (Creditworthiness)), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[5] 109 FERC ¶ 61,186 (2004) (*Policy Statement*).

[6] References to FTR markets in this order, as in Order No. 741, also include the Transmission

the risk that RTOs and ISOs may not be allowed to use netting and set-offs, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke "material adverse change" clauses to demand additional collateral from participants, and adoption of a two-day grace period for "curing" collateral calls.

5. Requests for rehearing were filed by the New York Independent System Operator, Inc. (NYISO), Morgan Stanley Capital Group Inc. (Morgan Stanley), Financial Marketers,[7] the American Public Power Association (APPA), East Texas Cooperatives, Six Cities,[8] Midwest Transmission Dependent Utilities (Midwest TDUs),[9] Twin Cities,[10] and Southern California Edison Company (SCE). The New York Transmission Owners filed an answer.[11]

II. Discussion

A. Use of Unsecured Credit

1. Requests for Rehearing

6. Six Cities and Morgan Stanley seek rehearing of the Commission's requirement that each ISO and RTO revise its tariff provisions to reduce the extension of unsecured credit to no more than $50 million per market participant and $100 million per corporate family.[12]

7. Morgan Stanley argues that the Commission should eliminate the $50 million market participant cap. Morgan Stanley contends that the separate caps—$50 million for a market participant and $100 million for a corporate family—will encourage entities to reconfigure their corporate structures to avoid the $50 million per entity cap and instead use the $100 million corporate family cap. Morgan Stanley asserts that such a structure will increase costs to market participants, making the $50 million cap illusory and generating unnecessary burdens for ISOs and RTOs without a corresponding benefit.[13]

8. Conversely, Six Cities argue that the Commission should eliminate the $100 million corporate family cap. They assert that the Commission did not provide a rational explanation for permitting affiliated entities to impose a greater degree of risk than individual entities, and so should not have allowed the $100 million corporate family cap. Six Cities also argues that the $100 million corporate family cap could run up to $600 million if there was a default in every ISO/RTO.[14]

2. Commission Determination

9. The Commission grants rehearing on this issue. Specifically, the Commission is persuaded that an entity reconfiguring its corporate structure, to avoid the $50 million single-entity cap and to instead take advantage of the $100 million corporate family cap, raises a significant risk that is inconsistent with Order No. 741's intent to lower risk. Additionally, the Commission has taken into consideration Six Cities' point that affiliated entities should not be able to impose a greater risk to the stability of organized wholesale markets than individual entities. We agree that the cumulative danger posed by a $100 million corporate family cap on the use of unsecured credit poses an unacceptable risk to the organized wholesale electric markets; many market participants either themselves or through subsidiaries participate in multiple markets. We agree with Six Cities that the default of a single entity could result in a significant cumulative unsecured exposure if we were to allow the higher $100 million corporate cap for unsecured credit originally permitted in Order No. 741. Socializing such losses to other market participants could lead to even more significant market disruption than merely the default of a single entity. The Commission therefore grants rehearing and finds that the limit on the use of unsecured credit should be no more than $50 million per entity, including the corporate family to which an entity belongs.[15] This is the approach originally suggested by the Commission in its Notice of Proposed Rulemaking[16] and the Commission is persuaded it should return to this proposal.

B. Elimination of Unsecured Credit for Financial Transmission Rights Markets

1. Requests for Rehearing

10. APPA, Midwest TDUs, and Six Cities request rehearing on the Commission's elimination of unsecured credit in the FTR markets.[17] They argue that the Commission erred in eliminating unsecured credit for all participants, particularly load-serving entities.

11. APPA and Midwest TDUs argue that the elimination of unsecured credit in FTR markets will make it financially prohibitive for load-serving entities to obtain and hold long-term FTRs of ten years or more (LTTR).[18] They contend that this is inconsistent with the Commission's responsibilities, under section 217(b)(4) of the Federal Power Act (FPA)[19] and Order No. 681,[20] to enable load-serving entities to secure firm transmission rights on a long-term basis for long-term power supply arrangements to serve their load. At a minimum, they contend, the Commission should direct RTOs and ISOs to implement Order No. 741 in compliance with section 217(b)(4) and Order No. 681. Further, APPA and Midwest TDUs argue that they be allowed to request exemptions under Order No. 741 to ensure that a load-serving entity's access to LTTRs is not impaired.

12. Midwest TDUs further argue that ISOs and RTOs manage risk in the FTR markets by determining the creditworthiness of individual FTR market participants. Moreover, Midwest TDUs contend that load-serving entities are less of a credit risk because their bond resolutions give explicit payment

Congestion Contracts (TCC) markets in NYISO and the Congestion Revenue Rights (CRR) markets in California Independent System Operator (CAISO).

[7] Financial Marketers are comprised of Energy Endeavors LP, Big Bog Energy, LP, Gotham Energy Marketing, LP, Rockpile Energy, LP, Coaltrain Energy, LP, Longhorn Energy, LP, GRG Energy, LLC, MET MA, LLC, Pure Energy, Inc., Red Wolf Energy Trading, LLC, Jump Power, LLC, Silverado Energy LP, JPTC, LLC, Blue Star Energy, LLC, and Tower Research Capital LLC.

[8] Six Cities are comprised of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

[9] Midwest TDUs are comprised of Indiana Municipal Power Agency, Madison Gas & Electric Company, Missouri River Energy Services, Southern Minnesota Municipal Power Agency and WPPI Energy.

[10] Twin Cities are comprised of Twin Cities Power, LLC, Twin Cities Energy, LLC, TC Energy Trading, LLC, Cygnus Energy Futures, LLC, and Summit Energy, LLC.

[11] The New York Transmission Owners are comprised of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

[12] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 49–57.

[13] Morgan Stanley, November 22, 2010 Request for Rehearing at 4–5 (Morgan Stanley Request).

[14] Six Cities November 19, 2010 Request for Rehearing at 12–14 (Six Cities Request).

[15] While a corporate family may choose to have a single member company participate in an RTO/ISO's market, or instead opt to have more than one do so, in either case, the single entity or multiple entities together will have a cap of no more than $50 million.

[16] *See Credit Reforms in Organized Wholesale Electric Markets,* Notice of Proposed Rulemaking, 75 FR 4310 (Jan. 27, 2010), FERC Stats. & Regs. ¶ 32,651, at P 19 (2010).

[17] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 70–79.

[18] APPA November 19, 2010 Request for Rehearing at 1–3, 4–9 (APPA Request); Midwest TDUs November 22, 2010 Request for Rehearing (Midwest TDUs Request).

[19] 16 U.S.C. 824q(b)(4).

[20] *Long-Term Firm Transmission Rights in Organized Electricity Markets,* Order No. 681, FERC Stats. & Regs. ¶ 31,226, *reh'g denied,* Order No. 681–A, 117 FERC ¶ 61,201 (2006).

priority to energy and transmission market service providers over bondholders, in effect giving RTOs/ISOs a security interest in their accounts receivable. APPA also contends that, although the Commission noted the challenges in valuing FTRs, the Commission did not provide guidance in how to address that issue.

13. Six Cities contends that the Commission should not have eliminated unsecured credit for all types and holders of FTRs. Six Cities notes that the CAISO has two types of FTRs: allocated CRRs, which are used by load-serving entities to hedge congestion costs for purchases to serve the needs of native load customers, and auctioned CRRs, which may be purchased by any entity that satisfies CAISO's qualification criteria. Six Cities argues that CAISO should be allowed to differentiate between the two categories in setting credit requirements. Specifically, Six Cities argues that load-serving entities have no obligation to pay for allocated CRRs, thus cannot default. By eliminating unsecured credit for all FTRs without regard to the purpose for purchase, Six Cities argues that the Commission's decision is not reasoned decision-making as required by the Administrative Procedures Act.[21]

2. Commission Determination

14. The Commission denies rehearing. The Commission is not persuaded that the elimination of unsecured credit in the FTR markets is inconsistent with the statutory directive to facilitate access to long-term FTRs. While section 217(b)(4) directs us to exercise our authority under the FPA to "enable[ ] load-serving entities" to "secure" FTRs "on a long-term basis," the statute does not require that we guarantee the availability of unsecured credit, and does not require that we ignore the risks posed by the use of unsecured credit. Denying unsecured credit does not prohibit load-serving entities from securing long-term FTRs, but rather merely requires use of some other form of financing, *e.g.,* the use of secured credit or the posting of collateral. Moreover, there is nothing in the record to indicate that acquisition of long-term FTRs will be prohibitively expensive. Our reason for eliminating reliance on unsecured credit in the FTR markets is to reduce risk to market participants, including risk to those market participants that are load-serving entities. Those seeking rehearing on this issue have failed to demonstrate that this risk can and should be so readily discounted.

15. Nor is the Commission persuaded that unsecured credit in FTR markets should be allowed for certain market participants based on the "purpose" of the entity engaging in the FTR market. The FTR market exists to hedge, *i.e.,* manage, risk, but there are no guarantees that such hedges, even for load-serving entities, will themselves have no risk. The risk of adverse FTR market outcomes and potential effects on market participants led us to take these actions initially, and are no more or less applicable to some participants than others based on the "purpose" of the participant.[22] Finally, to the extent that certain FTRs have inherently low risk, we expect that the RTO and ISO's credit modeling will result in relatively low collateral requirements.

16. As to the question of how FTRs are valued, as we stated in Order No. 741, this issue is beyond the scope of this proceeding.[23] Regarding the Midwest TDUs' argument that where bond resolutions give explicit payment priority to energy and transmission market service providers over bondholders, in effect giving RTOs/ISOs a security interest in their accounts receivable, first, it is not clear that such payment priority would apply in the event of a default in an FTR market. Furthermore, we are not persuaded that giving such payment priority would provide a level of security comparable to the elimination of reliance on unsecured credit.

C. Ability To Offset Market Obligations

1. Requests for Rehearing

17. Morgan Stanley, SCE, NYISO, and the New York Transmission Owners seek rehearing of the Commission's directive that, if an ISO/RTO wishes to allow netting of amounts owed to a market participant against amounts owed by that participant, the ISO/RTO must revise its tariff to include one of the following options: (1) Establish a central counterparty; (2) require market participants to provide a security interest in their transactions in order to establish collateral requirements based on net exposure; or (3) propose another alternative, which provides the same degree of protection as the two above-mentioned methods.[24]

18. NYISO requests clarification that the Commission intended that, in the absence of a counterparty, security interest, or other alternative, netting would only be prohibited across product or service categories. If the Commission does not grant the clarification, NYISO requests rehearing, arguing that an ISO/RTO be allowed to net amounts owed against amounts receivable if supported by the doctrine of recoupment. NYISO contends that, under the doctrine of recoupment, it is inequitable for a debtor to enjoy the benefits of a transaction without also meeting its obligations, so a market participant's benefits from its sales within a category area are lawfully offset by its obligations related to its purchases within the same product category.[25] NYISO argues that, in the event of a market participant's bankruptcy, the bankruptcy court would allow netting within a product or service category under the doctrine of recoupment.

19. SCE requests a similar clarification, and questions how "gross obligations" is defined. SCE states that the Commission was not clear whether requiring collateral posted to gross obligations would (i) allow for netting within a given market but not between markets, (ii) allow for netting for transactions deemed not to have participated in the markets (*e.g.* E-schedules), or (iii) disallow netting both within markets and across markets and require credit obligations to be determined on an absolute gross basis.[26]

20. SCE also requests that the Commission extend the time for compliance with this tariff revision until October 1, 2012, or alternatively, clarify that parties may move for an extension of time if needed.[27]

21. Morgan Stanley argues that ISOs and RTOs should not require market participants to post collateral to their gross obligations, especially if they are netting amounts owed against amounts receivable under their tariffs. Morgan Stanley contends that requiring collateral to gross obligations will be very expensive, without corresponding benefits. Morgan Stanley also asserts that "other less costly (and at least as effective) options are available."[28] Morgan Stanley requests in the

[21] Six Cities Request at 3, 10–12 (citing *Petal Gas Storage, L.L.C.* v. *FERC,* 496 F.3d 695, 698 (D.C. Cir. 2007), and others).

[22] The analysis in this paragraph, and the prior paragraph, explains why, as a generic matter, we will not allow exemptions from this requirement of Order No. 741.

[23] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 76.

[24] *Id.* P 116–22. The Commission also left open the possibility of setting credit requirements based on gross obligations. *Id.*

[25] NYISO November 19, 2010 Request for Clarification or Rehearing at 4 (citing *In re Peterson Distributing, Inc.,* 82 F.3d 956 (10th Cir. 1996), and other cases). The New York Transmission Owners support NYISO's arguments. New York Transmission Owners December 8, 2010 Answer.

[26] SCE November 22, 2010 Request for Clarification or Rehearing at 4 (SCE Request).

[27] *Id.* at 5–6.

[28] Morgan Stanley Request at 6, generally 5–7.

alternative that if the Commission retains this requirement, then it should allow higher levels of unsecured credit to ameliorate the effects of this provision.

2. Commission Determination

22. The Commission denies rehearing. In Order No. 741, the Commission established requirements to minimize risk in the event of bankruptcy (*i.e.,* the options noted in paragraph 117 of Order No. 741, and described above in paragraph 17) out of concern that the effect of a default could be exacerbated by a bankruptcy court decision that does not allow netting. Those concerns exist whether netting is performed within a market product category or across market categories. A market administrator must have legal support to net transactions, whether it serves as a counterparty, has been granted a security interest in the transactions, or employs some other solution, in the event of a legal challenge to set-off during a bankruptcy proceeding.[29] The record before us does not clearly demonstrate that the availability of netting will depend on whether it is within or across product categories, and therefore we deny rehearing on this issue.

23. Our denial of rehearing is based in part on the testimony we received during the May 2010 technical conference. In response to questioning regarding set-off within product markets, Mr. Stephen Dutton suggested that a bankruptcy court would be most likely to allow netting within product categories if the ISO or RTO was acting in the same capacity with respect to amounts owed and amounts owing.[30] In response to Mr. Dutton's comments, Mr. Harold Novikoff asserted that the bankruptcy court would look at a different issue, specifically, whether the ISO or RTO is a party to the transaction.[31] Mr. Iskender Catto reiterated Mr. Novikoff's opinion, indicating that a court would look first to the identity of the counterparty, then the role served by the counterparty.[32] Based on this testimony, we believe that netting within product categories may put an RTO or an ISO at risk, were it to not adopt one of remedies we specified in Order No. 741.

24. The Commission also denies Morgan Stanley's request for rehearing on the issue of posting collateral based on gross obligations; this was merely one option presented in Order No. 741. The Commission provided two other options to meet its requirements on this matter and expressed its willingness to consider yet others that can be shown to provide the same degree of protections as the two other options set out in Order No. 741. In the absence of the RTO or ISO taking advantage of such options, it is appropriate that credit requirements be set based on gross obligations in order to minimize the risk, and costs, of market participant default and a bankruptcy court decision refusing to allow netting; anything less would not adequately protect the market and participants in the markets.

25. As to SCE's request that the Commission delay the required filing date of a compliance filing regarding this requirement to October 1, 2012, we believe that such an extension is excessive. However, we will extend the date for filing tariff revisions to comply with this requirement related to the ability to offset market obligations to September 30, 2011, with the relevant tariff revisions to take effect January 1, 2012.

D. Minimum Criteria for Market Participation

1. Requests for Rehearing

26. APPA, Twin Cities, Six Cities, and Financial Marketers seek rehearing on the Commission's determination that each ISO and RTO should include in its tariff language that sets forth specific minimum participation criteria to be eligible to participate in the organized wholesale electric market, such as requirements related to adequate capitalization and risk management controls.[33]

27. APPA requests that the Commission instruct RTOs and ISOs to avoid unreasonable or onerous conditions on load-serving entities or provide specific exemptions for them if needed. APPA states that smaller, public power load-serving entities present "minimal risk, and related costs," so they should not have to comply with unreasonable or onerous minimum criteria to participate in the market. Also, a default by such a participant would not pose a risk of significant market disruption.[34]

28. Twin Cities request that the Commission provide stronger guidance on minimum criteria, and require that the criteria be uniform across ISOs and RTOs. Twin Cities state that market participants that participate in several markets are burdened by participating in multiple stakeholder processes and they risk being treated differently by different markets. Twin Cities request that the Commission establish the minimum participation criteria, similar to that of the Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC), based on tangible net worth. Similar criteria, established by the Commission to apply to all ISO and RTO markets, would provide regulatory certainty, reduce risk, and promote the goal of Order No. 741.[35]

29. Six Cities requests that the Commission require that minimum participation criteria be tiered or calibrated based on the magnitude of a market participant's positions in the market. Because the size of a participant's positions has an effect on the size of a risk that it poses, there should be a correlation between the market participant's positions and the minimum criteria.[36]

30. Financial Marketers express concern that the minimum criteria will exclude small and mid-size companies, virtual traders, and new entrants from participating in the RTO/ISO markets. They contend that the Commission has praised such participants,[37] and that customers in Midwest ISO have suffered higher prices since Midwest ISO began discouraging virtual trading by allocating high Revenue Sufficiency Guarantee (RSG) charges to virtual transactions.[38] Financial Marketers further argue that the stakeholder process will not protect small companies or new entrants, because large utilities will be able to meet any minimum criteria and have a vested interest in excluding competition.

31. Financial Marketers argue that most smaller companies are fully collateralized, and thus pose no threat. They contend that other markets rely on collateral requirements to curb market

[29] Section 553 of the Bankruptcy Code, 11 U.S.C. 553, provides that a creditor may offset payments owed to the debtor against payments owed by the debtor, under certain circumstances.

[30] Testimony at Technical Conference on *Credit Reforms in Organized Wholesale Electric Markets,* Tr. 93:2–16 (May 11, 2010) (Mr. Stephen Dutton, Barnes & Thornburg).

[31] *Id.* at 93:20–94:17 (Mr. Harold Novikoff, Wachtell, Lipton, Rosen & Katz).

[32] *Id.* at 94:24–95:11 (Mr. Iskender H. Catto, Kirkland & Ellis on behalf of the Committee of Chief Risk Officers).

[33] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131–34.

[34] APPA Request at 4–9.

[35] Twin Cities November 22, 2010 Request for Clarification or Rehearing at 5–7 (Twin Cities Request).

[36] Six Cities Request at 3, 10–12. Financial Marketers echo these comments. Financial Marketers November 22, 2010 Request for Rehearing at 13 (Financial Marketers Request).

[37] Financial Marketers Request at 3–4 (citing *California Independent System Operator Corp.,* 107 FERC ¶ 61,274 (2004), and others).

[38] *Id.* at 4–5.

risk, and that the CFTC does not require minimum capitalization.[39]

32. Financial Marketers also note that ISO New England Inc. (ISO–NE) and PJM Interconnection, LLC (PJM) have previously considered minimum participation criteria, but abandoned their efforts after concluding that they would reduce competition, result in greater market power by existing large companies, and not provide any additional protections to the market.[40] Financial Marketers conclude that market participants have developed businesses based on participation in the organized wholesale electric markets, and regulations that would prohibit their participation would result in a regulatory taking that would require compensation.[41]

2. Commission Determination

33. The Commission denies rehearing. In Order No. 741, the Commission deferred to stakeholder processes the determination of reasonable minimum criteria for market participation.[42] Because no market participation criteria have yet to be filed, the Commission cannot determine whether such criteria are or are not reasonable. However, we note that we did not mandate a single set of criteria for all participants in a market,[43] and we see value in Six Cities' suggestion that stakeholders consider whether some criteria can be tiered or calibrated based on, for example, the size of a market participant's positions. Such an approach would allow for differentiation based on a market participant's characteristics, but still reduce the market's exposure to the risk of a default. We remind stakeholders that the Commission will review all criteria, including both market-wide criteria and any tiered or calibrated criteria, when such criteria are filed, to ensure that they are just and reasonable and not unduly discriminatory or preferential.

E. Grace Period To "Cure" Collateral Posting

1. Requests for Rehearing

34. East Texas Cooperatives request rehearing on the Commission's establishment of a two-day grace period to "cure" a collateral call.[44] East Texas Cooperatives assert that the Commission should not have established a uniform two-day period because it was not supported by sufficient evidence and the requirement will be onerous for small market participants with small staffs and constrained budgets. East Texas Cooperatives argue that most ISOs and RTOs already have two- or three-day cure periods, and the matter should have been left to their discretion. Alternatively, the Commission could establish a uniform three-day "cure" period for all entities or, as a last resort, a three-day period for not-for-profit load-serving entities, such as cooperatives, municipalities, and other public power entities.

2. Commission Determination

35. The Commission denies rehearing. In establishing the two-day cure period in Order No. 741, the Commission carefully weighed the needs of market participants with the need for the mitigation of uncertainty when the organized electric wholesale markets are under stress. As we learned during the financial crisis, a market administrator may request additional collateral when the market is under stress. As a result, timely cure of a collateral deficiency is critical. We also note that the CFTC called for a one-day cure period, while others promoted a three-day cure period, and we found—and continue to find—that the two-day cure period strikes a reasonable balance between mitigating uncertainty in the market and providing for the needs of participants.

F. Regulatory Flexibility Analysis

1. Requests for Rehearing

36. APPA, Six Cities, and Financial Marketers challenge the Commission's conclusion that Order No. 741 "will not have a significant economic impact on a substantial number of small entities."[45] They contend that the Commission should analyze the effect of Order No. 741 on small entities, as required by the Regulatory Flexibility Act (RFA).[46]

37. APPA and Six Cities argue that the Commission erred in determining that small utilities within the balancing authority area of an RTO have a choice as to whether to join the RTO. Because large transmission owners are part of the RTO, they argue, small utilities must join to obtain necessary transmission and ancillary services. APPA estimates that more than a thousand public power distribution systems, plus rural electric cooperatives, are located in states served by RTOs and are "small utilities" within the meaning of RFA. APPA also contends that public power systems have unique financial constraints and may not be able to meet the new financial requirements that RTOs might impose.[47]

38. In support of its argument, Six Cities cites *Aeronautical Repair Station Ass'n,*[48] in which, they state, the court held that even though air carriers were the direct objects of the rule promulgated by the Federal Aviation Administration (FAA), the employees of the contractors and subcontractors were also subject to the rule. The D.C. Circuit concluded that the FAA was required to analyze the effect of the rule on the contractors and subcontractors.[49] Six Cities argues that the ISOs and RTOs are analogous to air carriers, and market participants can be compared to the contractors and subcontractors which are also directly regulated by the agency's rule.[50]

39. Financial Marketers argue that the Commission did not properly analyze the effect of minimum participation criteria on small financial traders under the RFA. Financial Marketers contend that the Commission's directives will push small financial traders out of ISO/RTO markets and prevent market entry by smaller companies.[51]

2. Commission Determination

40. The RFA requires that, when promulgating a final rule, an agency must conduct an analysis that includes, among other things, "(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate

[39] *Id.* at 29–31.

[40] *Id.* at 14–15.

[41] *Id.* at 32–33.

[42] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132–33.

[43] While we did indicate that criteria should apply to all market participants rather than only certain participants, *see* Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 133, our intent was that there be minimum criteria for all market participants and not that all market participants necessarily be held to the same minimum criteria. For some criteria, holding all market participants to the same minimum criteria may be appropriate. For other criteria, however, it may be appropriate to hold different participants to different minimum criteria, *e.g.,* based on the size of the participants' positions.

[44] *Id.* P 160–63.

[45] *Id.* P 184. The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (2010).

[46] 5 U.S.C. 601–12.

[47] APPA Request at 10.

[48] *Aeronautical Repair Station Ass'n, Inc.* v. *FAA,* 494 F.3d 161 (D.C. Cir. 2007).

[49] *Id.* at 177.

[50] Six Cities Request at 6–9.

[51] Financial Marketers Request at 18–20.

is available; * * * and (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes * * *."[52]

41. Under the RFA, an agency must consider the economic impact on entities directly affected and regulated by the subject regulations. The D.C. Circuit has held that Congress did not, however, intend to require that the agency "consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy."[53] More recently, the Seventh Circuit compared the holdings in several cases considering the RFA, including *Aeronautical Repair Station Ass'n,* and described the rule as follows: "Small entities directly regulated by the proposed statute—whose conduct is circumscribed or mandated—may bring a challenge to the RFA analysis or certification of an agency. * * * However, when the regulation reaches small entities only indirectly, they do not have standing to bring an RFA challenge."[54] The court further stated that, where the regulation "expressly" addresses an entity's actions, that entity is subject to an RFA analysis, and that, although the regulation may affect the actions of other entities, those other entities are not subject to an RFA analysis.[55]

42. We note at the outset that the regulations adopted in this proceeding directly apply to RTOs and ISOs only, not small entities, thus the Commission is not required to assess the impact of the rule on small entities.[56] In contrast to *Aeronautical Repair Station Ass'n,* in which the regulations expressly required certain actions by small entities, in this rulemaking, the regulations require specific actions only by the RTOs and ISOs.[57] Further, the relevant impact considered under the RFA is the impact of compliance, including "the projected reporting, recordkeeping and other compliance requirements of the proposed rule."[58] Those obligations are directly imposed on RTOs and ISOs only, and not market participants.

43. Additionally, in issuing Order No. 741, the Commission focused on protecting the organized wholesale electric markets from default by a market participant. In the event of a default by a market participant, the losses related to that default must be socialized among all other market participants, potentially leading to cascading defaults, all leading to adverse effects on customers. The Commission sought to balance measures intended to protect the market and market participants from the risk of a default against the effect of the measures on market participants. For instance, in establishing the cap on unsecured credit,[59] setting the two-day cure period,[60] and, on rehearing, allowing RTOs/ISOs to consider a market participant's level of participation in the market in setting minimum criteria,[61] the Commission has sought to protect the markets and market participants from the risk of a default, while providing consideration of the needs of the market participants themselves.

44. The Commission thus has sought to accommodate market participants' concerns while still meeting its responsibility to protect markets to ensure that the resulting rates are just and reasonable and not unduly discriminatory or preferential under FPA sections 205 and 206; however, we are not obligated to conduct a further analysis under the RFA. The regulations promulgated in Order No. 741 and here direct the actions of the ISOs and RTOs in administering the organized wholesale electric markets. While the regulations may indirectly affect other entities—market participants, including investor-owned utilities, municipalities and cooperatives, and financial marketers, as well as customers of all kinds—we are not required to conduct an analysis under the RFA on such entities in this proceeding.

45. Furthermore, by requiring tariff revisions to protect the markets and market participants from the risk and resulting cost of default by others, we are not only protecting market participants from the risk and resulting costs of default by others, but we are, in particular, protecting those smaller market participants that are least able to withstand a default. Smaller market participants have fewer resources available to them to deal with a default when one occurs, and thus it is particularly important for smaller market participants that the Commission put in place measures that minimize the risk of a default and the resulting cost of a default.

46. Further, we note that ISOs and RTOs are in the best position, in the first instance, to assess to what extent credit practices, as implemented in their markets, will have an adverse effect on their market participants, as well as the potential harm to the market in the event of a default. Thus, as noted in Order No. 741, ISOs and RTOs may, through their stakeholder processes, propose specific exemptions for individual entities whose participation is such that a default would not risk significant market disruptions.[62] We also note that, as the ISOs and RTOs submit their compliance filings, interested persons will have an opportunity to contest the various revisions as filed for individual tariffs, and the Commission remains open to comments on the particular revisions at that time. The Commission, however, will not, at this time, adopt any exemptions.

III. Information Collection Statement

47. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[63] The revisions in Order No. 741 to the information collection requirements for ISOs and RTOs were approved under OMB Control Nos. 1902–0096. While this order clarifies and revises aspects of the existing information collection requirements, it does not add to these requirements. Accordingly, a copy of this order will be sent to OMB for informational purposes only.

IV. Document Availability

48. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

49. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full

[52] 5 U.S.C. 604(a)(3), (5).

[53] *Mid-Tex Electric Cooperative* v. *FERC,* 773 F.2d 327, 343 (D.C. Cir. 1985); *see also Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 868–69 (D.C. Cir. 2001).

[54] *White Eagle Cooperative Association* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

[55] *Id.*

[56] *Cement Kiln Recycling Coalition,* 255 F.3d at 869.

[57] *Aeronautical Repair Station Ass'n, Inc,* 494 F.3d at 177.

[58] *Mid-Tex Electric Cooperative,* 773 F.2d at 342 (citing 5 U.S.C. § 603(b)(4) and related legislative history).

[59] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 50.

[60] *Id.* P 161.

[61] *See supra* P 33.

[62] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 165. We also note that a market participant retains its right to individually seek an exemption under section 206 of the FPA.

[63] 5 CFR 1320.11.

text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type "RM10–13" in the docket number field.

50. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

V. Effective Date

51. Changes to Order No. 741 adopted in this order on rehearing will become effective March 28, 2011.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends part 35, subchapter B, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.47 is amended by revising paragraph (a) to read as follows:

§ 35.47 Tariff provisions regarding credit practices in organized wholesale electric markets.

* * * * *

(a) Limit the amount of unsecured credit extended by an organized wholesale electric market to no more than $50 million for each market participant; where a corporate family includes more than one market participant participating in the same organized wholesale electric market, the limit on the amount of unsecured credit extended by that organized wholesale electric market shall be no more than $50 million for the corporate family.

* * * * *

[FR Doc. 2011–4088 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 7346]

RIN 1400–AC67

Exchange Visitor Program—Fees and Charges

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations regarding fees and charges for Exchange Visitor Program services. The fees permit the Department to recoup the cost of providing such Exchange Visitor Program services.

DATES: *Effective Date:* This rule is effective 30 days from February 25, 2011.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522, 202–632–2805, or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 7077 at 75 FR 60674–60679, October 1, 2010, with a request for comments, amending § 62.17 ("Fees and Charges") containing all of the fees and charges for Exchange Visitor Program services. As explained in the proposed rule, the Department is increasing user fees charged for Exchange Visitor Program services in order to recoup the full cost of such services which are requested and performed for the benefit of foreign nationals or U.S. corporate entities. These costs were calculated by an independent certified public accounting firm in full compliance with the Office of Management and Budget directives regarding such user fee calculations as set forth in OMB Circular A–25.

The Department received three comments and is now promulgating a final rule with no changes from the proposed rule. Thus, the fee charged to foreign nationals for a request for individual program services, such as change of program category, program extensions and reinstatements, will decrease to $233.00. The fee charged to U.S. corporate entities for requests for program designation, redesignation and amendments to program designation will increase to $2,700.00 in order to recoup the full cost of such services.

Comment Analysis

The Department received three comments. One comment suggested that the Exchange Visitor Program be closed and that the fees be increased to $10,991 for application fees and $5,945 for individual program services. The Department rejected this comment as there is no basis or justification for such a proposal. The comment was not responsive to the proposed rule concepts. Another comment was from an academic institution and opined that a 54% increase in fees was such a financial burden on academic institutions that the redesignation period should also be increased. As no other academic institutions presented this view, we find that this comment does not represent the views of the higher academic community or its ability to pay this bi-annual redesignation fee. A further comment was from a private sector organization that combined comments to both opposition of the final secondary school student rule and the proposed fee rule and does not believe that the increase in fees will help the Department with its oversight responsibilities. This comment was not responsive to the proposed rule which discussed neither secondary school student exchanges nor oversight initiatives or duties of designated program sponsors.

Regulatory Findings

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government supervises programs that invite foreign nationals to come to the United States to participate in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government often has been, and likely will be, held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems.

The purpose of this rule is to set the fees that will fund the services provided by the Exchange Visitor Program Office of Designation, which provides services to 1,226 sponsor organizations and 350,000 Exchange Visitor Program participants. These services include oversight and compliance with program requirements as well as the monitoring of programs to ensure the health, safety and well-being of foreign nationals entering the United States (many of these exchange programs and

participants are often funded by the U.S. Government) under the aegis of the Exchange Visitor Program and in furtherance of its foreign relations mission. The Department of State represents that failure to protect the health and well-being of these foreign nationals and their appropriate placement with reputable organizations will have direct and substantial adverse effects on the foreign affairs of the United States.

Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule as a proposed rule and solicited comments. This was without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above, the Department believes that this final rule is exempt from the provisions of 5 U.S.C 553, and that no other law requires the Department to give notice of proposed rulemaking. Accordingly the Department believes that this rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272, section 3(b).

Nevertheless, the Department has examined the potential impact of this rule on small entities. Entities conducting student exchange programs are classified under code number 6117.10 of the North American Industry Classification System. Some 5,573 for-profit and tax-exempt entities are listed as falling within this classification. Of this total number of so-classified entities, 1,226 are designated by the Department of State as sponsors of an exchange visitor program, designated as such to further the public diplomacy mission of the Department and U.S. Government through the conduct of people-to-people exchange visitor programs. Of these 1,226 Department designated entities, 933 are academic institutions and 293 are for-profit or tax-exempt entities. Of the 933 academic institutions designated by the Department, none are believed to meet the definition of small entity for Regulatory Flexibility Act analysis purposes. The RFA utilizes the SBA's definition of "small entities" for educational institutions, which are for-profit entities that have annual revenues of less than $7 million. The RFA defines "small organizations" as any not-for-profit educational institution that is independently owned or operated and not dominant in its field. Of the 293 for-profit or tax-exempt entities designated by the Department, 131 have annual revenues of less than $7 million, thereby falling within the analysis purview of the Regulatory Flexibility Act. Although, as stated above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and, as such, that this rule is exempt from the rulemaking provisions of section 553 of the APA, given the projected costs (discussed below) to the approximately 131 small entities designated to conduct exchange visitor programs, the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. The annual additional cost to a small entity is $476.00.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any 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.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13563 and Executive Order 12866

As discussed above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order. The Department has examined the economic benefits, costs, and transfers associated with this final rule, and finds that educational and cultural exchanges are both the cornerstone of U.S. public diplomacy and an integral component of American foreign policy. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this rule. The Department projects the cost to the government of providing Exchange Visitor Program services to be $3.4 million annually. This rule will provide an estimated $3.4 million annually that will support the operations of the Department's Office of Designation, including funds for designation and redesignation, for individual exchange participant services, and the appropriate share of costs for regulatory review and development, outreach, and general program administration. These costs are divided among the 1,226 designated sponsors who will account for $2.7 million of the total $6.8 million over the next two years, with foreign national exchange participants requesting individual-based program services accounting for the remaining $4.1 million. The actual increase in annual costs per designated sponsor is $462 which represents a total annual increase of $378,302. The cost to foreign national exchange participants requesting program services has been decreased by $13 per transaction. Thus, the Department of State has identified $3.4 million in economic transfers associated with this rule. The Department has not identified any monetized benefits or costs, though it believes that the revenue generated by these fees and charges will enable the Department to administer an effective program and is essential to continuing to support and strengthen the United States' foreign policy goal of promoting mutual understanding between the people of the United States and other countries.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize

litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking are pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35 and OMB Control Number 1405–0147, expiring on November 30, 2013.

List of Subjects in 22 CFR Part 62

Cultural exchange program.

Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.;* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, section 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

■ 2. Section 62.17 is revised to read as follows:

§ 62.17 [Amended]

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) *Amounts of fees.* The following fees are prescribed.

(1) For filing an application for program designation and/or redesignation (Form DS–3036)—$2,700.00.

(2) For filing an application for exchange visitor status changes (*i.e.,* extension beyond the maximum duration, change of category, reinstatement, reinstatement-update SEVIS status, ECFMG sponsorship authorization, and permission to issue)—$233.00.

Dated: February 22, 2011.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–4276 Filed 2–24–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0031]

Nationally Recognized Testing Laboratories Fees

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is adjusting the approach it uses for calculating the fees the Agency charges Nationally Recognized Testing Laboratories (NRTLs), and also is requiring prepayment of these fees. This adjustment increases the fees; OSHA is phasing in the fee increase over three years for existing NRTLs and pending NRTL applicants. OSHA began charging NRTLs fees in 2000, and revised the fee schedule only twice since then (in 2002 and 2007).

DATES: This final rule becomes effective on March 28, 2011.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110. OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html* or see *http://www.osha.gov* and select "N" in the site index).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Occupational Safety and Health Administration (OSHA) is adjusting the approach it uses to calculate the fees charged to Nationally Recognized Testing Laboratories (NRTLs). This adjustment will recoup a larger percentage of the cost of administering the NRTL Program than the current approach. This adjustment allows OSHA to continue to charge NRTLs for the core application processing and audit functions performed under the NRTL Program, while also recouping the other costs, such as the cost for ancillary activities that provide special benefits to NRTLs, that currently represent a significant portion of OSHA's costs of running the NRTL Program.

Because the revised approach results in a large increase in the fees for existing NRTLs and pending NRTL applicants, OSHA is instituting a three-year phase-in period for any fee increase that is greater than $200. OSHA also is revising language in 29 CFR 1910.7(f) (the OSHA rule implementing the NRTL fee structure) to clarify the cost basis for the fees. In addition, OSHA will now require advance payment of all NRTL fees, which complies with instructions to Federal agencies issued by the Office of Management and Budget (OMB).

In this notice, section II describes the NRTL Program and the prior fee structure for charging NRTLs for application processing and audits. In section III, OSHA explains the legal authority for recovering costs for ancillary activities and leave. The Agency also explains the basis for advance collection of the fees. Section IV describes how OSHA will recoup the ancillary and leave costs, and section V shows the derivation of the fee amounts. Sections VI and VII present the revised fee schedule and fee descriptions, respectively, and address the sole comment OSHA received in response to the proposal. Finally, in sections VIII and IX, respectively, OSHA explains the

major revisions to the fees and to the regulatory text of 29 CFR 1910.7(f).

II. Background

Many of OSHA's safety standards require approval (*i.e.,* tested and certified) of equipment or products used in the workplace to help ensure that workers can use them safely. See, *e.g.,* 29 CFR part 1910, subpart S. In general, an NRTL must approve such equipment and products. The NRTL Program administered by OSHA ensures that laboratories perform testing and certification appropriately,

The NRTL Program requirements are set forth in 29 CFR 1910.7, "Definition and requirements for a nationally recognized testing laboratory," which specifies that, to receive and maintain recognition as an NRTL, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure safe use of the products in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures. 29 CFR 1910.7(b).

OSHA requires that organizations applying for initial recognition as an NRTL provide, in writing, detailed and comprehensive information about their programs, processes, and procedures. To process an application, OSHA reviews the written information for completeness and adequacy, and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (*i.e.,* an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits primarily to ensure that each NRTL maintains its programs and continues to meet the recognition requirements. Currently, there are 15 NRTLs operating 49 recognized sites in the U.S., Canada, Europe, and the Far East. Application processing and audits are the core functions that OSHA performs for the NRTL Program.

To perform these core functions, OSHA also must perform a number of ancillary activities that support these functions. OSHA investigates complaints filed against NRTLs to ensure that the laboratories are performing their testing and certification functions adequately. In addition, OSHA represents the NRTL Program in a variety of forums related to conformity assessment [1] of products used in the workplace. OSHA also maintains a detailed Web site that both explains the program and, more importantly for the NRTLs, lists all the laboratories currently recognized under the NRTL Program, the products each laboratory can test, and registered certification marks used by each laboratory.

On August 30, 2000, OSHA established a schedule of fees for several of the services rendered to NRTLs; specifically, the application processing and audit functions. In the **Federal Register** notice announcing the fee schedule (65 FR 46797, July 31, 2000), OSHA found that laboratories receive "special benefits" from the NRTL Program, and that charging these laboratories was appropriate under the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701), OMB Circular A–25 "User Charges," and other legal authorities. 65 FR 46803. At 65 FR 46807, OSHA stated:

> NRTLs accrue "special benefits" from the services that OSHA renders to them. These "special benefits" are the product of OSHA's initial and continuing evaluation of their qualifications to test and certify products used in the workplace, e.g., the acknowledgement of their capability as an NRTL. The primary special benefits of NRTL recognition are the resulting business opportunities to test and certify products for manufacturers, the NRTL's clients. These opportunities may be in the form of new, additional, or continuing revenue and clients. Once the NRTL has properly certified a product, a manufacturer may then sell this product to employers, enabling them to comply with product approval requirements in OSHA standards.

Through that rulemaking, OSHA promulgated 29 CFR 1910.7(f). Paragraph (f) states that each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. 29 CFR 1910.7(f)(1). Specifically, the Agency assesses fees for the following activities: (1) Processing applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and (2) audits. The rule also sets forth that OSHA bases the fees, in part, on the staff costs per hour of performing application processing and audit activities.

This final rule adjusts the approach that OSHA uses to calculate the fees charged for the services it provides to NRTLs. OSHA makes this adjustment because the prior fee schedule only allowed recovery of about half of the allowable reimbursable costs of the NRTL Program.[2] For example, the prior approach did not recover the costs of the ancillary activities that are necessary to the program's functioning.

III. Legal Considerations

This final rule adjusts the approach that the Agency uses to calculate the fees it charges NRTLs for services performed to the benefit of the NRTLs by including the costs for benefits shared by all NRTLs. As described above, these costs include costs associated with ancillary activities and leave. Although OSHA still does not charge separate fees for the time spent on ancillary activities and leave, it adjusted the rate charged for the fee-generating activities to account for the portion of the program costs attributable to ancillary activities and leave. This section describes the legal basis for OSHA recouping these costs from the NRTLs.

A. Legal Authority for Charging Fees

1. Statutory Authority

In Title V of the IOAA, Congress set forth the objective of collecting fees and charges for services and things of value provided by an agency. As noted in this statute, "It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible." 31 U.S.C. 9701(a). Additionally, the Congressional Committee that drafted the measure indicated, "The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries." *Nat'l Cable Television Ass'n* v. *U.S.,* 415 U.S. 336 (1974), *quoting* H.R. Rep. No. 82–384, at 2–3 (1951). Accordingly, Congress enacted the statute to ensure that the specific individuals and companies that receive benefits from agency programs, not taxpayers at large, fund the programs.

[1] OSHA generally uses the term "approval" to describe the type of testing or certification activities performed by NRTLs. Conformity assessment is a term used internationally to describe such activities, and is defined as "any activity concerned with determining directly or indirectly that requirements are fulfilled." (*see* item 12.2, ISO Guide 2—Standardization and related activities—General vocabulary.)

[2] In February 2007, OSHA issued a revision of its fee schedule to account for increases in program costs (*see* 72 FR 7468). This revision, however, did not alter OSHA's method for calculating fees. OSHA based the increase in the February 2007 fees on cost of living and time adjustments, but used the same calculation set forth in the initial **Federal Register** notice published in July 2000. OSHA previously updated the initial fees in January 2002 (*see* 67 FR 5299).

In addition to establishing a source of funding, Congress also provided general guidance to agency heads on the establishment of fees. The fees are to be "fair" and based on the costs to the Government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. See 31 U.S.C. 9701(b). The 1993 OMB Circular A–25 (discussed in greater detail below) embodies the authority of the IOAA, and reflects interpretations from the related case law decisions.

Since 1997, in OSHA's yearly appropriations, Congress specifically authorized the Secretary of Labor to collect and retain fees charged to sustain the NRTL Program, stating, "[T]he Secretary of Labor is authorized * * * to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums * * * to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace." See, *e.g.,* Consolidated Appropriations Act for FY 2000, Pub. L. 106–113 (113 Stat. 1501A–222) and Consolidated Appropriations Act, 2009, Pub. L. 111–117 (123 Stat. 3034).

2. Case Law

The Supreme Court and the Courts of Appeals issued decisions addressing the application of the IOAA and its interpretation by Federal agencies. These cases provide guidance that provides specific information regarding the fee schedules, and the methods of assessing fees, that agencies may use. These decisions make clear that agencies may recoup all of the Governmental costs associated with providing private entities with specific benefits.

In 1974, the Supreme Court decided the companion cases of *Nat'l Cable Television Ass'n,* 415 U.S. 336, and *Fed. Power Comm'n* v. *New England Power Co.,* 415 U.S. 345 (1974). In *Nat'l Cable,* the Court found that an agency may charge a fee for services, but the agency should base the fee on "value to the recipient." *Nat'l Cable,* 415 U.S. at 342–43. In *New England Power Co.,* the Court held that, pursuant to the IOAA and OMB Circular A–25, agencies can only recoup specific charges for specific services to specific individuals or companies. *Fed. Power Comm'n,* 415 U.S. at 349.

In *Nat'l Cable Television Ass'n, Inc.* v. *FCC*, 554 F.2d 1094 (DC Cir. 1976), the Court of Appeals also made clear that the fees must be for specific services. The court upheld charging both an application fee and an annual fee provided that the agency, to prevent charging twice for the same service, makes clear the activities covered by each fee. *Nat'l Cable Television Ass'n,* 554 F.2d at 1105. Furthermore, the court agreed that fees based on reasonable approximations of costs for the services are acceptable: "It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class * * * in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received." *Nat'l Cable Television Ass'n,* 554 F.2d at 1105–1106.

In *Elec. Indus. Ass'n* v. *FCC,* 554 F.2d 1109 (DC Cir. 1976), the Court of Appeals indicated that "expenses incurred to serve some independent public interest cannot * * * be included in the cost basis for a fee, although the Commission is not prohibited from charging an applicant or grantee the full cost of services rendered * * * which also result in some incidental public benefits." *Elec. Indus. Ass'n,* 554 F.2d at 1115. Moreover, the court held that the agency can only include, in the cost basis of the fees, expenses incurred to confer value upon the recipient. *Id.* Along similar lines, the same Court of Appeals clarified in a companion case that "the proper standard is not value derived by the recipient but rather value conferred on the recipient. In our view, this standard requires the fee assessed to bear a reasonable relationship to the cost of the services rendered to identifiable recipients." *Capital Cities Communications, Inc.* v. *FCC,* 554 F.2d 1135, 1138 (DC Cir. 1976).

Lastly, in *Miss. Power and Light* v. *U.S. Nuclear Regulatory Comm'n*, 601 F.2d 223 (5th Cir. 1979), the 5th Circuit Court of Appeals upheld the Nuclear Regulatory Commission's (NRC) fee schedule methodology because the NRC did not seek to recover the entire cost of regulating. The NRC charged a fee based only on the costs of providing a specific benefit to identifiable private parties. *Miss. Power and Light*, 601 F.2d at 230.

3. OMB Circular No. A–25

OMB issued Circular No. A–25, pursuant to the IOAA, to establish "Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. * * * [I]t provides guidance for agency implementation of charges and the disposition of collections." User Charges, Circular No. A–25, OMB (July 8, 1993). In section 6 of the Circular, OMB directs agencies to assess user charges "against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." Furthermore, user charges "will be sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as sovereign." Finally, the Circular defines full cost to include "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service." Examples of such costs include personnel costs (including salaries and fringe benefits), physical overhead, management and supervisory costs, and costs of enforcement and research. Circular No. A–25, OMB 6(d)(1)(a)–(e).

The legal authorities described above establish several considerations for determining how an agency can assess fees for services rendered: (1) The agency must base the fees on special benefits derived from Federal activities beyond those benefits received by the general public; (2) the agency must confer the benefits on identifiable recipients; and (3) the fees must bear a reasonable relationship to the cost of the services rendered. In addition, the OMB circular makes clear that agencies can recoup indirect costs of services rendered to special beneficiaries, and that agencies should endeavor to make agency programs self-sustaining to the extent that the programs provide special benefits to identifiable recipients. Assessing NRTL fees that recover the cost of ancillary activities and leave satisfies these considerations, which we further discuss below.

B. Explanation for Charging Fees for Ancillary Activities

1. The Agency Must Base Fees on the Costs To Confer Special Benefits Derived From Federal Activities Beyond Those Benefits Received by the General Public

OSHA based the implemented fee structure on the costs of providing services that confer special benefits. As noted earlier, NRTLs and NRTL applicants accrue special benefits from the services that OSHA renders for the fees. These special benefits are the product of OSHA's initial and continuing evaluation of an organization's qualifications to test and certify products used in the workplace. Primarily, these special benefits are the business opportunities that result from OSHA recognition of these organizations as NRTLs, which allows

them to offer their testing and certification services to manufacturers of products that require NRTL testing and certification when used in the workplace. These opportunities are "special benefits derived from Federal activities beyond those received by the general public," as described in OMB Circular A–25.

Ancillary activities performed by OSHA under the NRTL Program result in identifiable costs from the provision of those specific services and benefits to NRTLs. Examples of ancillary activities include administration of the program, budgetary, and policy matters; training OSHA personnel to perform program activities; interagency and international coordination; responses to requests for information related to the program; handling complaints; Web site development and maintenance; and participation in meetings with stakeholders and outside interest groups.

OSHA must recover the costs of these activities because it incurs such costs solely for the administration of the NRTL Program, from which NRTLs derive special benefits. The absence of these necessary activities would severely reduce, if not eliminate, many of the benefits that NRTLs derive from OSHA recognition. Two examples illustrate this point. First, through application processing and audits, OSHA determines which organizations qualify as NRTLs and which products each NRTL can approve under the NRTL Program. By maintaining a Web site, OSHA shares this information with the public. This activity benefits NRTLs by making current and potential clients, as well as employers, aware that OSHA qualified the NRTLs to approve those products.

Second, complaint handling is a valuable activity that OSHA relies upon, especially between audits, to learn of inappropriate or questionable activities by an NRTL. If, for example, OSHA receives a complaint that an NRTL is testing equipment made for use in extremely hazardous environments, but OSHA does not recognize the NRTL to perform this testing, OSHA would investigate the complaint to determine whether the testing jeopardizes the safety of the equipment. If so, OSHA could take steps to prevent accidents from occurring as a result of using this equipment. Through complaint handling, OSHA reinforces the NRTL Program's effectiveness, which maintains confidence in the program, and, thus, assures the benefits derived by NRTLs from participation in the program.

2. Benefits Are Conferred on Identifiable Recipients

As with the prior schedules, OSHA is assessing fees to identifiable recipients of the NRTL Program benefits. The ancillary activities result in benefits shared among all NRTLs, in contrast to the benefits of the core application and auditing services, which are more easily attributed to individual NRTLs than ancillary activities. To share the costs of these benefits equitably, while still ensuring that the fees charged are specific with regard to the services provided to individual NRTLs, OSHA is apportioning the costs of the shared benefits in accordance with the time OSHA spends on core services rendered to each NRTL. This approach recognizes that an individual NRTL's portion of the shared benefits relates directly to the core benefits it receives. OSHA is, therefore, retaining its fee structure of charging the NRTLs fees involving core actions directed at, or initiated by, an NRTL, while adjusting the rate used to compute the fee to recoup a greater portion of the actual program costs than is the case currently.

OSHA will charge an NRTL a fee when the NRTL applies, for example, for an expansion of its recognition by OSHA. In this situation, the NRTL is asking OSHA to review its application for expansion so that the NRTL can increase its scope of recognition. The fee that OSHA would charge in this instance is related directly to the NRTL seeking the expansion. The converse is also true: If in any year an NRTL does not apply to expand its recognition, OSHA will not charge the NRTL an expansion-application fee. Thus, the new fee schedule would reimburse OSHA for ancillary activities, but would do so by charging specific NRTLs only when these NRTLs receive the core services of the program.

3. The Fees Charged Bear a Reasonable Relationship to the Costs of the Program

OSHA is basing much of the fee schedule on the average documented cost of specific activities performed to benefit the NRTLs. Through the revised fee schedule issued by this rule, OSHA will recover a large percentage of the costs of the NRTL Program. To ensure that it does not overcharge, OSHA structured this revised fee schedule to capture approximately 95% of the costs of the NRTL Program.

4. OSHA Is Fully Complying With the IOAA and OMB Circular A–25

Finally, by including the costs of ancillary activities in the fees, OSHA now is fully compliant with the IOAA and OMB Circular A–25, both of which require agency programs to be self-sustaining to the extent that the programs confer special benefits on identifiable recipients. In fact, until implementation of a revised fee schedule in February 2007, that allowed recovery of approximately 50% of program costs, OSHA was recovering only about 30% of the costs of the NRTL Program; taxpayers were funding the remaining 70% through OSHA's annual appropriations. This arrangement does not comport with the IOAA and OMB Circular A–25, and OSHA is correcting this deficiency through this final rule.

In summary, including the cost of ancillary activities in the fees comports with the legal framework described in the preceding section. That is, OSHA based the fees on special benefits to NRTLs, assessed to identifiable beneficiaries of the NRTL Program, and reasonably related to OSHA's costs of providing the services to the NRTLs.

OSHA recognizes that its new approach differs from the position it took in the 2000 rulemaking implementing the initial fee structure. In that rulemaking, OSHA stated that it would not seek to recover costs for some ancillary activities such as Web site development and training compliance officers on the NRTL Program. *See, e.g.,* 65 FR 46802. At the time of that rulemaking, however, OSHA believed those activities would use only a small portion of the NRTL Program's resources. Recent workload reviews show that these activities have become a large part of the program, and now are critical in supporting the NRTL Program's core functions. It is, therefore, appropriate for OSHA to include these costs in the revised fees.

Because work on ancillary activities grew so much faster than program resources over the last several years, OSHA has less time available for application processing and audits than was the case in 2000. Moreover, because existing fees only recoup the cost of time spent on core services, OSHA is recovering a dwindling percentage of the NRTL Program costs. For OSHA to meet, on a timely basis, the needs of the NRTLs in application processing and auditing, while recovering its costs for providing those services, is a significant challenge. Through this final rule, OSHA will fund the resources to improve its effectiveness in rendering these core services.

C. Explanation for Assessing Costs for Leave

Although the prior fee structure accounted for some personnel costs for core NRTL activities, it did not account

for all personnel costs; therefore, it did not account for the total time spent on core activities. As Federal employees, Department of Labor employees, including OSHA employees, earn leave as part of their regular compensation. However, the prior fee structure failed to account for leave earned by OSHA employees, even though that leave is part of the personnel costs of rendering NRTL services.[3] In this respect, the prior fee structure was not compliant with OMB Circular A–25 and the other legal authorities described above. Thus, in this revised fee structure, OSHA is adjusting the personnel costs to include leave earned by all Federal employees performing services in support of the NRTL Program.

D. Explanation for Advance Collection of the Fees

Previously, OSHA required that NRTLs and applicants pay an application review fee when submitting an application, and, for initial applications, prepay the fee for an on-site assessment. OSHA generally billed the remainder of the fees to the NRTLs or applicants after it rendered the services. When OSHA adopted this billing system in the 2000 final rule, it expected the system to "reduce collection activity of the Agency, since only one bill would need to be sent to the NRTL for an audit, rather than the two contemplated under the NPRM." 65 FR 46802 (July 31, 2000). It, therefore, predicted a "minimal financial burden" to the Agency by delaying collection. *Id.*

However, in recent years this post-collection system resulted in problems, including the loss of some funds. For example, to ensure that the Agency retained all fees that were due for audits conducted during a fiscal year, OSHA requested that NRTLs pay fees in advance for any audits that it conducted in the last two months of the Federal Government fiscal year. OSHA requested advance payment because, to comply with Federal mandates, it could not retain any fees received after the end of a fiscal year, but would have to forfeit them to a general Federal Government fund. The current fee-collection system also made it difficult to ensure that the Agency complied with OMB Circular A–25. In addition to providing guidance regarding the collection and retention of user fees, OMB Circular A–25 generally requires agencies to collect user fees in advance. See OMB Circular A–25, Section 6.a.2.(c) ("User charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services."); see also OMB Circular A–11, "Preparation, Submission, And Execution Of The Budget" (June 2008), section 20.13.[4]

Therefore, while the current program directly benefits NRTLs, OSHA must advance funds to cover the program costs until the NRTLs or applicants reimburse OSHA for its program activities. Given the competing demands on the appropriations from which OSHA draws these funds, continued use of these general operating funds to pre-fund the NRTL Program could adversely impact OSHA's ability to perform other operational functions.

In summary, OSHA will now bill in advance for audits and other fees to ensure compliance with OMB guidance, and to reduce any financial impact on OSHA's other functions caused by advancing funds to the NRTL Program. OSHA will estimate and collect travel costs and other expenses in advance, and will adjust any difference between actual costs and estimated costs after completion of the audit or other activity.

IV. Explanation of the Revised Approach for Calculating Fees

Through this final rule, OSHA will continue to calculate the fee for each of the service activities listed in the fee schedule by multiplying an equivalent average cost per hour rate (ECR) by the time it takes to perform that activity: Fee for Activity = ECR × Time for Activity.

In the July 31, 2000, **Federal Register** notice, OSHA explained that it derived the initial fee schedule's ECR by dividing the total estimated direct and indirect costs of the program, excluding travel, (TPC),[5] by the total available annual work hours of the NRTL Program and legal staff that perform the services (TAW).[6] Although OSHA did not illustrate the derivation of the ECR as an equation in the 2000 notice, it does so here for clarification, and refers to it as ECR2000 (to contrast it with the equation for ECR2009, which we explain later in this notice); accordingly, ECR2000 = TPC2000/TAW2000.[7] As discussed above, the approach used in 2000 resulted in fees that recouped the costs only of the time spent actually performing individualized audits and application processing, which is only a portion of TAW, and did not recoup the costs of the time associated with running the program and providing other benefits shared among all NRTLs.

To account properly for the costs associated with these shared benefits, OSHA proposed and requested comment on the following calculation for the new ECR (ECR2009): Dividing the new estimated total cost of the NRTL Program (TPC2009) by the total annual service hours (TAS2009). This latter term is a new figure that equals the total estimated work hours that the NRTL Program staff spend on the core service activities for which OSHA will bill NRTLs; accordingly, ECR2009 = TPC2009/TAS2009. By way of comparison with the prior fee schedules, TAS equals TAW minus estimated hours spent on ancillary activities (AH) and leave (LH) (*i.e.,* TAS = TAW − AH − LH). By continuing to include the full program costs in the numerator (TPC2009), but including in the denominator (TAS2009) only the amount of time spent on providing "billable" core services, the revised ECR more accurately represents the total work hours spent on those core activities than the current 2000 equation; OSHA bills these hours to the NRTLs. The Agency did not receive any comments on this new calculation methodology, and is including it in the final rule as proposed.

OSHA could achieve the same result by charging each NRTL separately for its share of the program resources used to produce the shared benefits. OSHA did not use this method primarily because it would be impractical to calculate and track these shared costs separately for each NRTL, and to attribute the costs appropriately to individual NRTLs through separate fees. As explained above, the new fee approach adopted in this final rule, in which OSHA charges NRTLs only for core services, provides

[3] A small portion of NRTL fees covers the costs of legal services performed by attorneys in the Office of the Solicitor of Labor. OSHA included leave costs in that portion of the fees.

[4] Section 20.13(a) is a description of revolving funds that requires that, in the absence of a revolving fund, "advance payments must accompany orders." Section 20.13(b) specifies that agencies may use one of two methods to cover obligations by expenditure accounts, either using "advances collected up to the amount of accompanying orders" or "[w]orking capital that is available for this purpose."

[5] The TPC includes personnel costs for the NRTL Program and legal staff (including support and management staff), equipment, contract, and other costs necessary for the operation of the program. The ECR does not include travel expenses because OSHA charges for the actual staff travel expenses for an on-site visit after the auditor completes the visit.

[6] In discussing total hours in this notice, we often refer to "FTEs," which stands for "full-time equivalents." For purposes of this notice, FTEs equals total work hours divided by 2,080, the total available annual work hours (TAW) for one full-time Federal employee (*i.e.,* 1 FTE = 2,080 work hours).

[7] We use the TPC abbreviation in discussing our calculations in this final rule, but the total amount shown in the July 2000 notice (*i.e.,* TPC2000) will differ from the total shown in this final rule (*i.e.,* TPC2009) because of changes in the total costs of the program.

a more straightforward and manageable method, in comparison to the previous approach, of ensuring that OSHA recoups only "specific charges for specific services to specific individuals or companies." *Fed. Power Comm'n,* 415 U.S. at 349. In addition to this methodological change, the revised fee schedule presented in this notice also includes updated calculations of the total resources committed to the NRTL Program (TPC2009), and of the average time spent on some of the service activities for which OSHA charges fees.

OSHA estimated that TAS2009 = 3.5075 FTEs (7295.6 work hours), which is 50.11% of total available annual work hours (TAW2009), 7.0 FTE.[8] Using the TPC2009 of $1,079,090, shown in Table 1 below, the new rate is: ECR2009 = $1,079,090/7295.6 hours = $147.90.

Table 1 below shows a summary of program costs and value of revised ECR2009, which OSHA uses later to generate the revised fee schedule in section VI below.

TABLE 1—NRTL PROGRAM ANNUAL COST ESTIMATES—NEW ECR2009 CALCULATION

Description	Costs
Direct expenses	$512,342
Indirect expenses *	566,748
Total program costs (excluding travel) *(aka "TPC2009")*	1,079,090
Travel expenses	72,600
Overall program costs (includes travel) **	1,151,690
TAS2009 (3.5075 FTE × 2,080 work hours per FTE)	7,295.6
ECR2009 = TPC2009/TAS2009	147.90

* This amount consists of $441,408 for management, ancillary, and support costs; and $125,340 for equipment and other costs. **Note:** OSHA incurs most of these costs, but the costs also include applicable costs of a division of the Department of Labor's Office of the Solicitor.

** OSHA estimates the amount of fee collections to be approximately 95.2% of this total, or $1,096,000.

Finally, as mentioned above, the total cost of administering the NRTL Program increased since the last revision to the fee schedule published on February 15, 2007. This cost increase is due to two main reasons: an increase to account for additional program-staff resources, and the annual salary adjustments for Federal employees. Because of the increase to the TPC, and the revised approach for calculating ECR2009 described in this notice, OSHA's base rate (ECR) is increasing almost 132%, from $63.80 (in effect since February 15, 2007) to $147.90 shown above. OSHA estimates that this rate would result in total annual collections of $1,096,000 beginning three years after this rule's effective date, provided OSHA's NRTL Program costs remain unchanged. In fact, due to the three-year phase-in period, the rate and estimated total annual collections will increase the first year to about $91.80 and $690,000, respectively. Without a change in the fee schedule, but with the increase in staffing requirements for the NRTL Program, the first year's rate and estimated total annual collections would increase to $73.72 and $583,000, respectively. If the program's costs remain unchanged in the second year of the phase-in period, the rate and total annual collections resulting from to the new approach would be about $119.90 and $880,000, respectively.

For existing NRTLs and applicants that submit applications prior to the effective date of this final rule, OSHA will phase in, over three years, any fee increase that is greater than $200: a 33% increase for the first year's fees; a similar increase for the second year's fees; and the remaining increase in the third year. OSHA uses this $200 threshold because it limits the number of fees that would otherwise increase 100% for the first year; OSHA will phase in the increase for the remaining fees, thus reducing the financial impact the increase may have on any existing NRTL or applicant. As evident from the comparison of fees shown in VIII of this notice, this approach affects only three fees, which will increase by a combined total of $510. The $200 threshold and the three-year phase-in period will balance the need for a period of adjustment for some existing NRTLs against OSHA's responsibility to recoup the full costs of the NRTL Program as soon as possible. Although OSHA requested comments on these approaches and suggested alternatives, it received no comments.

The entire increase is effective immediately for any organization that submits an application to become a new NRTL if OSHA receives the application on or after the effective date of this final rule. OSHA is taking this approach because, unlike currently recognized NRTLs and pending applicants, new applicants are free to choose whether or not to participate in the NRTL Program.

V. Basis and Derivation of Fee Amounts

Tables 2, 3, 4, and 5, below, present the costs of the major activities for the various fee categories. In general, OSHA calculated the cost of these activities by multiplying the staff[9] activity time by ECR, and adding any applicable average travel costs. However, because OSHA charges for actual travel, only non-travel costs serve as the basis for the fees shown later in Tables A and B. In deriving the fee amounts shown in the fee schedule (Table A or B), OSHA generally rounded the costs shown in Tables 2, 3, 4, and 5, up or down, to the nearest $5 or $10 amount.

TABLE 2—INITIAL APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
Initial application review	Office and field staff time	120	$17,749
Additional review time	Office staff	16	2,367
Limited review time	Office staff	24	3,550
On-site assessment—first day (per site, per assessor)	Field staff time (16 hours preparation, 6 hours to process travel documents, and 8 hours at site).	30	4,437
	Field staff travel expense ($700 airfare/other + $100 per diem).	NA	800

[8] TAW2009 equals 7.0 FTE (*i.e.,* 7.0 FTE currently working on OSHA's NRTL Program); AH2009 equals 2.6675 FTE; and LH2009 equals 0.825 FTE. As a result, TAS2009 equals 7.0 minus 2.6675 minus 0.825, which is equal to 3.5075 FTE. **Note:** We also can derive the ECR2009 from the ECR2007 ($63.80) using a factor that takes into account the effects due to leave and ancillary activities, and the use of TAS instead of TAW. We do not illustrate this derivation here since the calculation is more involved than, and gives the same result as, the simple equation above.

[9] The term "staff" encompasses Federal employees, as well as any contract employees retained by OSHA for work on the NRTL Program.

TABLE 2—INITIAL APPLICATION COST ESTIMATES—Continued

Major activity	Type of cost	Average hours	Average cost *
	Total for on-site assessment—first day		5,237
On-site assessment—each additional day ** (per site, per assessor)	Field staff time (at site)	8	1,183
	Field staff travel expense (per diem only)	NA	100
	Total for on-site assessment—each additional day		1,283
On-site assessment travel time—per day (per site, per assessor)	Field staff	8	1,183
Review and evaluation (10 test standards)	Office staff time	2	296
Final report and Federal Register notice	Field and office staff time	132	19,524
Fees invoice processing	Office staff time	2	296

*Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($147.90).

Note: 2 additional days estimated for 2 assessors, and 4 additional days estimated for 1 assessor.

See notes to Table A below for more information concerning the activities listed in this table.

TABLE 3—EXPANSION APPLICATION (ADDITIONAL SITE) COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
Application review (expansion for site)	Office and field staff time	56	$8,283
Additional review time	Office staff	8	1,183
On-site assessment—first day (per site, per assessor)	Field staff time (12 hours preparation, 4 hours to process travel documents, and 8 hours at site).	40	5,916
	Field staff travel time expense ($700 airfare/other + $100 per diem).	NA	800
	Total for on-site assessment—first day		6,716
On-site assessment—additional day ** (per site, per assessor)	Field staff time (at site)	8	1,183
	Field staff travel expense (per diem only)	NA	100
	Total for on-site assessment—each additional day		1,283
On-site assessment travel time—per day (per site, per assessor)	Field staff	8	1,183
Review and evaluation fee (10 test standards)	Office staff time	2	296
Final report and Federal Register notice	Field and office staff time	50	7,396
Fees invoice processing	Office staff time	2	296

*Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($147.90).

Note: 2 additional days estimated for 1 assessor.

See notes to Table A below for more information concerning the activities listed in this table.

TABLE 4—RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
Application review (renewal or expansion other than additional site)	Office and field staff time	2	296
Additional review time	Office staff	8	1,183
Renewal application—information review	Office staff	40	5,916
On-site assessment—first day (expansion) (per site, per assessor)	Field staff time (8 hours preparation, 4 hours to process travel documents, and 8 hours at site).	20	2,958
	Field staff travel expense ($700 airfare/other + $100 per diem).	NA	800
	Total for on-site assessment—first day (expansion)		3,758
On-site assessment—first day (renewal) (per site, per assessor)	Field staff time (16 hours preparation, 4 hours to process travel documents, and 8 hours at site).	28	4,141
	Field staff travel expense ($700 airfare/other + $100 per diem).	NA	800
	Total for on-site assessment—first day (renewal)		4,941
On-site assessment—additional day ** (per site, per assessor)	Field staff time (at site)	8	1,183

TABLE 4—RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION COST ESTIMATES—Continued

Major activity	Type of cost	Average hours	Average cost *
	Field staff travel expense (covers per diem only)	NA	100
	Total for on-site assessment—each additional day		1,283
On-site assessment travel time—per day (per site, per assessor)	Field staff	8	1,183
Review and evaluation fee (10 test standards) (expansion)	Office staff time	2	296
Final report and Federal Register notice (with on-site assessment)	Office and field staff time	50	7,396
Final report and Federal Register notice (no on-site assessment)	Office and field staff time	30	4,437
Supplemental program review	Office and field staff time (per program requested, including consultation and assessor's memo).	4	592
Fees invoice processing	Office staff time	2	296

*Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($147.90).

**__Note:__ 2 additional days estimated for renewal assessment; no additional days for expansion assessment.

See notes to Table A below for more information concerning the activities listed in this table.

TABLE 5—ON-SITE OR OFFICE AUDIT COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
On-site audit—first day (per site, per auditor)**	Field staff time (12 hours pre-site review preparation, 4 hours to process travel documents, and 8 hours at site).	24	$3,550
	Prepare report/contact NRTL plus office review staff time (3 days for field staff and 2 hours for office staff).	26	3,846
	Subtotal (first day—regular audit)		7,396
	Field staff travel expense (700 airfare/other + 100 per diem).	NA	800
	Total for on-site audit—first day (regular audit)		8,196
On-site audit—first day (per site, per auditor)** (no nonconformances or observations requiring a response).	Prepare report plus office review staff time (4 hours for field staff and 2 hours for office staff).	6	887
	*Total for on-site audit (first day—audit with no nonconformances)****		5,237
On-site audit—additional day*** (per site, per auditor)	Field staff time (at site)	8	1,183
	Travel expense (covers per diem only)	NA	100
	Total for on-site audit—each additional day		1,283
On-site audit travel time—per day (per site, per auditor); also review of revised audit response—per on-site or office audit.	Field staff	8	1,183
Office audit—per day (per site, per auditor); no nonconformances or observations requiring a response.	Field staff	8	1,183
Office audit—per day (per site, per auditor); with nonconformances.	Field staff	16	2,367
Fees invoice processing	Office staff time	2	296

*Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($147.90).
**OSHA charges this first-day fee only once if it audits multiple sites of the NRTL during one trip.
***__Note:__ One additional day is estimated for one auditor.
****The 3,550 Field staff time and $800 Field staff travel expense are identical to those for the regular audit.
See notes to Table A below for more information concerning the activities listed in this table.

VI. Revised Fee Schedules

A. First Phase Fee Schedule for Existing NRTLs and Pending Applicants

OSHA is implementing the revised fee schedules shown below in Tables A and B. All existing NRTLs and any initial applicant (*i.e.,* an entity not presently approved by OSHA as an NRTL) having a pending application (*i.e.,* received by OSHA before the effective date of this rule), must pay the fees set forth in Table A during the first year of the three-year phase-in period. OSHA will publish the revised fee schedule for the second year at a later date, as explained below. In this final rule, OSHA revised the audit fees as explained above, and modified the fee schedule in Table A of the proposal slightly to clarify that initial NRTL applicants having

applications received by OSHA on or after the effective date of this rule must pay the fees in Table B, not Table A. The Agency eliminated the initial-application review fee in Table A, and added a reference to footnote 7 of the table to explain the fee amount that OSHA charges to pending applicants (*i.e.,* those applicants having applications received before the effective date of this rule) that substantially modify their applications after the effective date of the rule.

The fees in Table A are the fees for the first phase of OSHA's fee increase, which are applicable to existing NRTLs and pending applicants. As explained above, for existing NRTLs and pending applicants, OSHA is phasing in over a period of three years any fee increase that is greater than 200: 33% of the increased fees specified in this final rule on the effective date of the rule; another 33% increase in the second year; and the final 34% increase in the third year. OSHA will adjust the percentage increase when it performs its periodic review of the fees during the next two years; it will base the adjustment on any increase or decrease in fees calculated for each of those years. During this review, OSHA will determine the amount of time it actually charged for application processing and audits, and the actual indirect travel OSHA performed, and adjust the amount in the fee schedule by the amount over- or underestimated. OSHA then will publish the second-year fee schedule in the **Federal Register**.

TABLE A—NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM FEE SCHEDULE FOR EXISTING NRTLS AND APPLICANTS WHEN OSHA RECEIVES THE APPLICATION BEFORE MARCH 28, 2011

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
APPLICATION PROCESSING	Initial application review [1 8] (this fee is applicable only as described in note 7 to this table).	*See note 7.*
	Expansion-application review (per additional site) [1 8]	$3,420.
	Renewal or expansion (other) application review [1]	$300.
	Renewal information review fee [7]	$1,470.
	Additional review—initial application (if the application requires substantial revision, submit one-half of initial-application review fee) [7].	$2,370.
	Additional review—renewal or expansion application [7]	$730.
	Limited review—initial application [7]	$1,170.
	Assessment—initial application (per person, per site—first day) [2 10]	$2,740 + travel expenses.
	Assessment—renewal application (per person, per site—first day) [3 10]	$2,570 + travel expenses.
	Assessment—expansion application (additional site) (per person, per site—first day) [3].	$2,200 + travel expenses.
	Assessment—expansion application (other) (per person, per site—first day) [3].	$1,830 + travel expenses.
	Assessment—each additional day or each day on travel (per person, per site) [2 3].	$730 + travel expenses.
	Review and evaluation [5] ($30 per standard if already recognized for NRTLs and requires minimal review; otherwise, $296 per standard).	$30 per standard OR $296 per standard.
	Final report and **Federal Register** notice—initial application [5 9]	$12,080.
	Final report and **Federal Register** notice—renewal or expansion application (if OSHA performs on-site assessment) [5 9].	$4,580.
	Final report and **Federal Register** notice—renewal or expansion application (if OSHA performs no on-site assessment) [5 9].	$2,740.
AUDITS	On-site audit (per person, per site, first day) [6] ($3,260—no nonconformances).	$4,240 + travel expenses.
	On-site audit—each additional day (on-site or on travel)	$730 + travel expenses.
	(per person, per site); or review of revised audit response—per on-site or office audit [6].	
	Office audit (per person, per site, per day) [6]—$730 if no nonconformances, $1,120 if nonconformances found.	$730 or $1,120.
MISCELLANEOUS	Supplemental travel (per site—for sites located outside the 48 contiguous U.S. states or the District of Columbia) [4].	$1,000.
	Supplemental program review (per program requested) [4]	$270.
	Fees invoice processing (per application or audit) [4]	$300.
	Travel document processing (4 hours, per application or audit) [4]	$270.
	Late payment [11]	$150.
	Compensatory time for travel (per hour) [10]	$56.40.

Notes to Table A ("Nationally Recognized Testing Laboratory Program Fee Schedule"):

1. Must I pay the application-review fees, and when must I pay these fees?

If you are applying for initial recognition as an NRTL, and OSHA receives your application on or after the effective date of this fee schedule, you must pay the initial-application review fee in Table B when you submit your initial application. Pay this fee as two payments: one equaling the limited-review fee amount, and the remainder of the fee as a second payment. (*See* note 7 to this fee schedule if you submit your initial application before this schedule's effective date.) If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the expansion-application review fee or renewal-application review fee, as appropriate, and submit this fee concurrently with your expansion or renewal application. See note 7 if you amend or revise your initial or expansion application.

2. What assessment fees do I pay for an initial application, and when must I pay these fees?

If you are applying for initial recognition as an NRTL, and we accept your application, we bill you for the assessment fee and you must pay it before we perform the assessment. We base the prepaid assessment fee on estimated staff time and travel costs. After completing the actual assessment, we calculate the assessment fee based on the actual staff time and travel costs incurred in performing the assessment. The fee for staff time equals the first-day assessment fee for an initial application, plus the assessment fee for each additional at the site or on travel. (**Note:** Days charged for being in travel status are those allowed under government travel rules. This note applies to any assessment or audit.) We determine actual travel expenses based on government per diem and other travel rules. We bill or refund the difference between the amount you prepaid and the actual assessment fee. We reflect this difference in the final bill that we send to you for the application.

3. What assessment fees do I submit for an expansion or renewal application, and when must I pay these fees?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we bill you for this fee and you must pay it before we perform the assessment. We will base the prepaid fee on estimated staff time and travel costs. Following the assessment, we will calculate the fee based on the actual staff time and travel costs we incurred in performing the assessment. The fee for staff time equals the first-day assessment fee for the particular type of application, plus the assessment fee for each additional at the site or on travel. We determine actual travel expenses based on government per diem and other travel rules. OSHA charges the NRTL the first-day fee only once if OSHA audits multiple sites of the NRTL during one trip. We bill or refund the difference between the prepaid amount and the amount of the final invoice that we send to you for the application.

4. When do I pay the supplemental travel, the supplemental program review, the fees invoice processing fees, or the travel document processing fee?

You must pay the supplemental travel fee when you submit an initial application for recognition and the site you identified for recognition is outside the 48 contiguous U.S. states or the District of Columbia. The current supplemental travel fee is $1,000. We factor in this prepayment when we bill for the actual costs of the assessment, as described in note 2 to Table A above. See note 8 for possible refund of application or assessment fees. You must pay the supplemental program-review fee when you apply for approval to use other qualified parties or facilities to perform specific activities. See Chapter 2 of the NRTL Program Directive for more information regarding supplemental programs. We will include the invoice-processing fee in the total for each of our invoices to you. You must pay the travel document processing fee in advance to cover the costs of arranging and obtaining reimbursement for travel, which we generally include in the first-day fee for assessments and audits. We charge this fee for additional sites of the NRTL visited during one trip. We also charge this fee separately for trips to a location when the preparation time for the trip is minimal; for example, trips to a site that the NRTL qualified to perform specific or limited testing or certification activities for the NRTL.

5. When do I pay the review and evaluation, and the final report and **Federal Register** notice, fees?

An applicant or an NRTL also must pay these fees in advance of OSHA performing the assessment for the application. We calculate the review and evaluation fee at the rate of $30 per test standard requested for those standards that OSHA previously recognized for any NRTL and that require minimal review or do not represent a new area of testing for the NRTL. Otherwise, this fee is $296 per standard requested.

6. When do I pay the audit fee?

Each NRTL must pay this fee (on-site or office, as deemed necessary) in advance of OSHA commencing the audit, and we calculate this prepaid fee based on estimated staff time and travel costs. Following the audit, we will calculate the fee based on actual staff time and travel costs incurred in performing the audit. We charge the first-day audit fee at the rate of $4,240 for the first day at the site if the audit finds nonconformances or observations requiring a response. If the audit finds none, OSHA will credit the NRTL's account to reduce the fee to $3,260. In addition, we charge $730 for each additional day at the site, and $730 for each day in travel, plus actual travel expenses for each auditor. We also charge at the rate of $730 per day to review the NRTL's revised or supplemental response when its original response did not adequately resolve all the nonconformances documented in OSHA's audit report. OSHA charges the NRTL the first-day fee only once if OSHA audits multiple sites of the NRTL during one trip. However, see note 4 above. We determine actual travel expenses based on government per diem and other travel rules. We may add any underpayment(s) or credit any overpayments to the invoice for a future audit of the NRTL's site. For an office audit, we charge $730, per site, per person, per day, if the audit finds no nonconformances, and $1,120, if we find nonconformances or observations requiring a response. When the NRTL's response does not adequately resolve the nonconformances, the $730 per-day fee also applies to review the NRTL's revised or supplemental response.

7. When do I pay the additional review fee, renewal information review fee, or limited review fee?

The additional review fee covers the staff time required to review new or modified information submitted after we completed our preliminary review of an application. There is no charge for review of a "minor" revision, which entails modifying or supplementing less than approximately 10% of the documentation in the application. You must pay the additional review fee when submitting revisions modifying or supplementing from 10% to 50% of the documentation. For a new application, the fee represents 16 hours of additional review time, and for a renewal or expansion application, the fee represents 8 hours of additional review time. If you exceed that 50% threshold when submitting revised documentation for your application (*i.e.,* you substantially revise your application), you must pay half of the initial-application review fee ($4,635, if a pending applicant; $8,875 if a new applicant), the expansion-application review fee for adding a site, or the renewal- or expansion (other)-application fee, as applicable. If this latter fee applies, you also must pay review and evaluation fee ($296) for each test standard affected by the revision. The renewal information review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition. You must pay the additional review or renewal information review fee when submitting the additional or updated information. The limited review fee covers the time to review and return a new application that we find to be substantially deficient. OSHA deducts this fee from any refund due to the applicant.

8. When and how can I obtain a refund for the fees that I paid?

If you withdraw an initial application, or an expansion application for an additional site, after we commenced but before completing the full review, we will refund half of the application review fee. If you withdraw your application before we commence travel to your site to perform the on-site assessment, we will refund any prepaid assessment fees, or credit your account. We also will credit your account for any amount of the prepaid assessment or audit fees collected that is greater than the actual cost of the assessment. If the limited review fee applies (*i.e.,* we return the application), we will refund the balance of the initial-application review fee (*i.e.,* the amount in excess of the limited review fee). If an organization is no longer part of the NRTL Program, we will refund any funds collected in excess of all actual costs incurred through the date of termination. Other than these cases, we do not generally refund or grant credit for any other fees due or collected.

9. Am I still liable for any fees even if OSHA rejects my application or terminates my recognition?

If we reject your application, we will retain the fees pertaining to tasks we performed. For example, if we perform an assessment for an expansion application but deny the expansion, we will retain your prepaid assessment fee. Similarly, we will retain the final report and **Federal Register** fee if we wrote the report and published the notice. See note 11 to this Table A for the consequences of nonpayment.

10. What rate does OSHA use to charge for staff time (including Comp Time)?

OSHA estimated an equivalent staff cost per hour that it uses for determining the fees shown in the fee schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, contract services, supervision and support for each "direct staff" member, that is, the staff that perform the main activities identified in the fee schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $147.90. The hourly rate for Comp Time is based on the direct staff average salary and fringe costs only ($56.40). OSHA also will charge this rate for any other OSHA staff travel time in excess of the staff's normal 40-hour work week.

(For more information about Compensatory Time, see additional explanation in section VIII of this notice ("Major Changes to the Fee Schedule").)

11. What happens if I do not pay the fees you bill to me?

As explained above, if you are an applicant, we will send you a final bill (for any assessment and for the fees related to the review and evaluation, and the final report and **Federal Register** notice) in advance of the assessment. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in Table A of this notice. This late-payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 10). We also will halt any work on your application. If we do not receive payment within 30 days of the original due date, we will cancel your application. If you do not pay the prepaid fee for an audit by the due date, we will assess the late-payment fee shown in Table A of this notice. However, OSHA may decide to proceed with the audit. If we do not receive payment within 30 days of the original due date for an audit fee, we will publish a **Federal Register** notice stating our plan to revoke your NRTL recognition. However, note that, in either case, you may be subject to collection procedures under U.S. (Federal) law.

12. How do I know whether this is the most current fee schedule?

You may contact OSHA's NRTL Program (202–693–2110 or 2300) or visit the program's Web site to determine the effective date of the most current fee schedule. Access the site by selecting "N" in the alphabetical Index at *http://www.osha.gov.* Any application-review fees are those fees in effect on the date you submit your application. Other application-processing fees are those fees in effect when we perform the activity covered by the fee. Audit fees are those fees in effect on the date we begin the audit.

B. Fee Schedule for Applicants When OSHA Receives the Initial Application on or After March 28, 2011

Table B below is the fee schedule applicable to any applicant having an initial application received by OSHA on or after the effective date of this rule. This fee schedule also represents the projected fee that would apply to all other NRTLs and applicants when OSHA fully implements the final phase of the fee phase-in beginning in the third year after this rule's effective date. Table B is based on current projections, and it is likely that OSHA will adjust these fees during its periodic fee-review process.

TABLE B—NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM FEE SCHEDULE FOR APPLICANTS WHEN OSHA RECEIVES THE INITIAL APPLICATION ON OR AFTER MARCH 28, 2011

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
APPLICATION PROCESSING	Initial application review (submit fee as two payments) [1 8]	$17,750.
	Expansion-application review (per additional site) [1 8]	$8,280.
	Renewal or expansion (other) application review [1]	$300.
	Renewal Information Review Fee [7]	$2,370.
	Additional review—initial application (if the application requires substantial revision, submit one-half of initial-application review fee) [7].	$2,370.
	Additional review—renewal or expansion application [7]	$730.
	Limited review—initial application [7]	$3,550.
	Assessment—initial application (per person, per site—first day) [2 10]	$4,440 + travel expenses.
	Assessment—renewal application (per person, per site—first day) [3 10]	$4,140 + travel expenses.
	Assessment—expansion application (additional site) (per person, per site—first day) [3].	$3,550 + travel expenses.
	Assessment—expansion application (other) (per person, per site—first day) [3].	$2,960 + travel expenses.
	Assessment—each additional day or each day on travel (per person, per site) [2 3].	$1,180 + travel expenses.
	Review and evaluation [5] ($30 per standard if OSHA already recognizes the NRTLs and requires minimal review; otherwise, $296 per standard).	$30 per standard OR $296 per standard.
	Final report and **Federal Register** notice—initial application [5 9]	$19,520.
	Final report and **Federal Register** notice—renewal or expansion application (if OSHA performs on-site assessment) [5 9].	$7,390.
	Final report and FEDERAL REGISTER notice—renewal or expansion application (if OSHA performs no on-site assessment) [5 9].	$4,440.
AUDITS	On-site audit (per person, per site, first day) [6]	$7,400 + travel expenses.
	($4,440—no nonconformances)	
	On-site audit—each additional day (on-site or on travel) (per person, per site), or review of revised audit response—per on-site or office audit [6].	$1,180 + travel expenses.
	Office audit (per person, per site, per day) [6]—$1,180 if no nonconformances, $2,370 if nonconformances found.	$1,180 or $2,370.
MISCELLANEOUS	Supplemental travel (per site—for sites located outside the 48 contiguous U.S. states or the District of Columbia) [4].	$1,000.
	Supplemental program review (per program requested) [4]	$590.
	Fees invoice processing (per application or audit) [4]	$300.
	Travel document processing (4 hours, per application or audit) [4]	$590.
	Late payment [11]	$150.
	Compensatory time for travel (per hour) [10]	$56.40.

The notes to Table B are the same as the notes to Table A, except that the corresponding Table B fees apply instead of the Table A fees shown in these notes.

VII. Description of Fees and Review of Comment

This section describes the major tasks and functions covered currently by each type of fee category, *e.g.,* application fees, and the basis used to charge each fee.

Application Fees. This fee is for the technical work performed by OSHA's office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a determination on the test standards requested, which OSHA covers in the review and evaluation fee. OSHA based the application fees on the average cost per type of application. OSHA uses an average cost because the amount of time spent on application review does not vary greatly by type of application, i.e., the number and type of documents submitted generally will be the same for a specific type of application. Experience shows that most applicants follow the application guide that OSHA provides to them.

Assessment Fees. This fee is different for the initial, renewal, expansion (site), and expansion (other) applications. OSHA based this fee on the number of days for staff preparatory and on-site work, and related travel. OSHA uses six types of assessment fees, five of which involve charges per site and per person. The four assessment fees for the first day represent charges for office preparation and 8 hours visiting an applicant's facility. There is one fee covering either additional days at the facility or additional days in travel. OSHA assesses additional days in travel for either a half or a full day of travel. OSHA also assesses a supplemental travel amount for travel outside the contiguous 48 U.S. states or the District of Columbia. For initial applications, applicants must submit the amount to cover the assessment in advance with the application. In addition to the first

day and additional day amounts, the applicant or NRTL must pay actual travel expenses, based on government per diem and travel rules. For initial applications, OSHA will adjust the final bill or refund to the applicant for any difference between actual travel expenses and the advance travel amount.

Similar to the application fee, the office-preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff spend at least a full day performing the on-site work. The fee for the additional day reflects time spent at the facility and the actual travel expenses for that day.

Review and Evaluation Fee. OSHA charges this fee for evaluating each test standard that an applicant is proposing be part of its scope of recognition. The fee represents the staff time spent during the office review of such an application, and varies with the number of test standards requested by the applicant. In general, OSHA bases the fee on the estimated time necessary to review test standards to determine whether each one is "appropriate," as defined in 29 CFR 1910.7, and whether each test standard covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time required to determine the current designation and status (*i.e.,* active or withdrawn) of a test standard, which involves reviewing current directories of the applicable standards-development organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards previously approved by OSHA for other NRTLs. When the review is minimal, these activities take approximately 2 hours for 10 standards. When the review is more substantial, the estimated average review time per standard is one hour for each standard. Substantial review will occur when OSHA did not previously recognize the standard for any NRTL, or when the NRTL is proposing to test in a new area, *i.e.,* for a type of product not similar to any product currently included under its scope of recognition.

Final Report/Federal Register Notice Fees. OSHA charges these two fees for each application. The fee involves the staff time required to prepare a report of the on-site review of an applicant's or an NRTL's facility, which includes contacting the applicant or NRTL to discuss issues or items raised by findings made by OSHA during the on-site review. The fee also represents the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received in response to the **Federal Register** notice. OSHA bases these fees on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA does not perform an on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a recommendation regarding expansion or renewal.

On-site Audit Fees. These fees include the time for office preparation, time at the NRTL facility and travel, and time to prepare the report of the on-site audit. OSHA assesses the fee on a per-site basis, because the amount of preparation time generally does not vary significantly between sites. The actual time on site will vary depending on the scope of the audit but, currently, the limit generally is two days. As previously described, the audit fee includes amounts for travel based on actual travel expenses.

OSHA received only one comment in response to the proposed rule (see Ex. OSHA–2007–0031–0002), and the commenter expressed three concerns regarding the proposed audit fees. First, the commenter had a concern about the applicability of the first-day fee for an audit listed in Table 5 of the proposed rule. This table detailed the average actual costs that the Agency incurred in conducting an audit. The commenter noted that, under the rule as proposed, each audit would include a first-day fee, thereby changing OSHA's past practice of charging this fee only once if it visited multiple sites of an NRTL during one trip. OSHA will continue this practice, but did not explicitly note the practice in the proposal. Accordingly, OSHA revised Table 5 and the applicable note in the fee schedule to state the practice OSHA will follow. The revision, however, also clarifies that the fee for making travel arrangements still applies to each site, even though they may be sites of the same NRTL.[10]

Second, the commenter asserted that OSHA was charging too much time for the "prepare report/contact NRTL" portion of the audit fee. The commenter questioned the number of days of field staff time shown in Figure 5 of the proposed rule.[11] These days cover preparation of the report, any discussion with the NRTL when its response is unclear or unacceptable, and review and analysis of the NRTL's response to any nonconformances and observations identified during the audit.[12] The proposed rule was unclear regarding this latter task as evidenced by the commenter's statement that the proposal excluded a charge for this activity. While OSHA will continuously search for efficiencies in administering the NRTL Program, it cannot deviate from the actual costs of the program as would be necessary if it followed the commenter's recommendation.

The commenter also did not recognize the work done by OSHA auditors after the site visit, which is part of this item. An OSHA auditor develops an internal report detailing the auditor's review of each element of the NRTL's operations, and preparing the final version of the report detailing the nonconformances found. In addition, the auditor will be uploading this information into an audit report database. Three days to accomplish all of these tasks is reasonable, and represents OSHA's actual experience.

The third concern involved the commenter's belief that OSHA's audit fee excluded review and analysis of an NRTL's response to determine whether the corrective or other actions are acceptable. As explained earlier, the "prepare report/contact NRTL" portion of the audit fee includes this task. The commenter, believing OSHA omitted this portion of the audit fee, recommended that OSHA charge a fee based on the "levels of noncompliance," which OSHA takes to mean the number of nonconformances found during an audit. In response to this recommendation, OSHA notes that it calculates each fee based on the average time taken to complete an activity, and, in the case of the "prepare report/contact NRTL" part of the audit fee, the time taken to prepare and record the reports, review the NRTL's response, and contact the NRTL to address any remaining issues. Therefore, it would be inappropriate to charge a fee based on the number of nonconformances because that number does not

[10] The amount of time spent arranging travel plans for each site visited during one trip is typically the same regardless of whether the site is for the same, or a different, NRTL. Therefore, OSHA will continue to account for this part of the preparation time through the travel document processing fee. OSHA charges this fee when the auditor visits more than one NRTL site during one trip. See note 4 to Table A, below.

[11] This portion of the audit fee was shown as 26 work hours in the proposed rule, of which 24 hours, *i.e.,* 3 work days, was field time, and not the 2 days that was shown in the proposed rule. Table 5 of this final rule reflects the correct days. Eight of these 24 hours apply to reviewing the NRTL's response and contacting the NRTL, if needed.

[12] In this rule, when the term "nonconformance" is used alone, it also includes observations for which OSHA requires a response from the NRTL.

necessarily correspond to the time spent by the auditor. In addition, it would be impractical to track, and base a fee on, the time taken to review the corrective action for each nonconformance or any response required for an observation. In practice, the time taken for the auditor's review is simply the time to review the NRTL's entire response to OSHA's audit report, which OSHA already included in the 26 work hours shown in Table 5 for the "prepare report/contact NRTL" part of the audit fee.

The commenter's concern pointed out that the proposed on-site audit fee calculation inaccurately captures the staff's review time in the extreme cases, i.e., it is too high when there are no nonconformances, and too low when the resolution of nonconformances consumes a great deal of OSHA staff's time. To correct this inaccuracy, OSHA adjusted the audit fees by: (1) Reducing the fee by 20 work hours when there are no nonconformances, and (2) charging for extra time when the NRTL must submit a revised or supplemental response because the original one did not adequately address all of the nonconformances. In these latter cases, OSHA will charge the NRTL a daily rate, or a fraction of this rate, for the actual time OSHA staff spends reviewing the revised response. OSHA expects that it will rarely need to charge for extra time. However, in these cases, the program office will alert the NRTL about the extra charge, and then document the extra time and bill the NRTL accordingly. Based on its past experience, OSHA expects that the number of audits without nonconformances will exceed those audits that will require revised responses. Accordingly, it does not expect the additional fees to result in a significant increase in the overall cost impact to NRTLs.

Office Audit Fees. OSHA charges a separate fee for an office audit conducted instead of an on-site visit. OSHA provides a per-day rate, and the description in the schedule now makes this clear. Originally, this type of audit was to apply to an NRTL that regularly has little or no nonconformances during OSHA's on-site audit of the NRTL's site(s). Accordingly, the fee for the office audit, $730 per day under Table A, reflects the time to perform the audit and prepare a relatively short report. However, while addressing the sole comment to the Docket, OSHA also determined that a clarification was necessary regarding the fee for an office audit. OSHA adjusted the fee schedule to include a fee for office audits that find nonconformances, $1,120 under Table A. This fee reflects 16 hours for preparation of the audit report and review of the NRTL's response. This fee is lower than the similar fee for an on-site audit because office audits generally require less auditor review time than for on-site audits. As in the case of the on-site, an additional per-day fee also applies to an office audit when the NRTL must submit a revised or supplemental response.

Miscellaneous Fees. The fee schedule shows the average cost for one full day of staff time. OSHA uses this fee primarily when refunding the assessment fee. OSHA will also charge a fee for late payment of the audit fee. OSHA bases the amount for the late fee on 1 hour of staff time charged at the fully implemented rate shown in Table B above. OSHA also charges a supplemental program-review fee, which represents the time OSHA needs to review the documents that an NRTL submits to justify its proposed use of a supplemental program. Supplemental programs allow NRTLs to use other qualified parties or facilities to perform the specific tasks covered by the program, and that are necessary for product testing and certification.

VIII. Major Changes to the Fee Schedule

The following table shows the major adjustments (*i.e.,* increases or decreases of $100 or more) that OSHA made to the fee schedule in Table A compared to the prior 2007 fee schedule.[13]

Description of activity or category	Prior fee amount	New fee amount—first year increase	New fee amount—full increase
Initial application review	$5,100	$17,750	$17,750.
Expansion-application review	$1,020	$3,420	$8,280.
Additional review—initial application	$1,020	$2,370	$2,370.
Renewal application—information review	$1,020	$1,470	$2,370.
Additional review—renewal or expansion application	$510	$730	$1,180.
Limited review—initial application	$0	$3,550	$3,550.
Assessment—initial application (per person, per site—first day)	$1,910	$4,440	$4,440.
Assessment—renewal application (per person, per site—first day)	$1,790	$2,570	$4,140.
Assessment—expansion (additional site) (per person, per site—first day).	$1,530	$2,200	$3,550.
Assessment—expansion (other) (per person, per site—first day)	$1,280	$1,830	$2,960.
Assessment—each additional day, or travel time—each day (per person, per site).	$510	$1,180 (new applications); 730 other applications.	$1,180.
Review and evaluation	$13 per standard	$30 per standard	$30 per standard.
Final report and **Federal Register** notice—initial application	$8,420	$19,520	$19,520.
Final report and **Federal Register** notice—renewal or expansion application (if OSHA performs on-site assessment).	$3,190	$4,580	$7,390.
Final report and **Federal Register** notice—renewal or expansion application (if OSHA performs no on-site assessment).	$1,910	$2,740	$4,440.
On-site audit (first day)	$2,680	$4,240	$7,400.
On-site audit (first day) (no nonconformances)	$0	$3,260	$4,400.
On-site audit—each additional day	$510	$730	$1,180.
Office audit—nonconformances found	$0	$1,120	$2,370.
Supplemental program review	$260	$270	$590.
Invoice processing	$130	$300	$300.

[13] See 73 FR 7468 (February 15, 2007) for the 2007 fee schedule.

Clarification of Travel Expenses Fee. The fee schedule states that OSHA will charge for time on travel following government travel rules. Those rules permit a traveler to earn a special type of leave called "compensatory time for travel," or simply "travel comp time." The traveler generally earns this time when in transit for a duration of time that exceeds the traveler's regular work schedule. Travel comp time is earned time off, as opposed to receiving overtime pay. The amount of travel comp time varies depending on the specific circumstances of the travel. In general, it is greater for trips outside the contiguous 48 U.S. states and the District of Columbia than for trips within the U.S. Travel comp time is for travel time that exceeds an employee's regular work hours, *i.e.,* the total available work hours (TAW) discussed under section III above. Because this time is specific to a particular trip, OSHA will include it in the travel fee that OSHA charges for a trip. OSHA does not include travel comp time in the total time used to develop the ECR, *i.e.,* the TAS. Instead, OSHA will charge travel comp time at the average rate for direct OSHA staff time, which will be $56.40 under the revised fee schedule. Although this discussion focuses on travel comp time, OSHA also will charge this rate for any other OSHA staff travel time in excess of the staff's regular work hours.

IX. Changes to 29 CFR 1910.7(f)

As noted earlier, 29 CFR 1910.7(f) specifies the conditions for assessing and determining fees. This rule states that OSHA will assess fees for processing applications for initial recognition, expansion of recognition, or renewal of recognition, review and evaluation of the applications, and preparation of reports, evaluations, publishing **Federal Register** notices, and audits of sites. It further states that OSHA will calculate the fees based on either the average or actual time required to perform the work necessary, the staff costs per hour, and the average or actual costs for travel for on-site reviews. 29 CFR 1910.7(f)(1) and (2). In addition, this rule states that OSHA will review costs annually, and will propose a revised fee schedule if warranted. In this final rule, OSHA is replacing the reference to an "annual review" with a "periodic review" to allow it more flexibility in adjusting fees as appropriate. OSHA does not expect to review the fee schedule more than once annually, but anticipates situations in which it may not complete the cost review within a single-year period.

OSHA also is revising the language in paragraph (f) to clarify the basis used for calculating fees, consistent with OMB Circular A–25. Specifically, this revision makes clear that the term "costs" means the full costs of performing the activities that benefit the NRTLs. Thus, as revised, paragraph (f)(2) reads: "The fee schedule established by OSHA reflects the *full* cost of performing the activities for each service listed in paragraph (f)(1) of this section." (Emphasis added.) Similarly, OSHA is revising paragraph (f)(3)(i) to clarify that the two references to the cost of the program mean the *full* cost of the program.

OSHA also is revising the language in paragraphs 29 CFR 1910.7(f)(1) and (f)(4) to require advance payment of the fees. In this regard, OSHA is revising the first sentence of 29 CFR 1910.7(f)(1) to specify that NRTLs and applicants must pay all applicable fees in advance. In addition, OSHA is revising the table in 29 CFR 1910.7(f)(4), which establishes important billing periods and related actions, to provide information on the new advanced-billing process. One of the revisions to this table reduces the amount of time OSHA must wait before publishing its plan to revoke recognition of NRTLs that do pay audit fees. Accordingly, OSHA revised the current provision of "60 days after the bill date" to "30 days after due date." OSHA requested comment on this revision in the proposal, but received none.

X. Final Economic Analysis and Final Regulatory Flexibility Analysis

Executive Order 12866 and the Regulatory Flexibility Act (RFA), as amended in 1996, require each Federal agency to analyze the costs, and other consequences and impacts, including small business impacts, of its rules. Consistent with these requirements, OSHA analyzed the costs of this final rule and the impacts of this rule on affected laboratories and small businesses.

The Agency received one comment on the proposal (Ex. OSHA 2007–0031–0002). The commenter suggested revisions to the unit costs used to determine NRTLs' fees. As noted above in this preamble, OSHA revised the unit costs in response to this comment; however, the average cost of NRTLs' fees remains unchanged from the proposal. The Agency updated information on revenue for the affected industry and laboratories; otherwise, this final economic analysis changed little from the preliminary economic analysis (PEA) accompanying the proposed regulation.

Affected Industries

When the Agency established its NRTL fee schedule in 2000, there were 17 NRTLs with 42 operational sites. Today, there are 15 NRTLs (including two foreign-owned and -operated NRTLs) with 49 sites (see the following table for a list of current NRTLs).

NRTL name	Number of sites
Canadian Standards Association (CSA)	6
Communication Certification Laboratory, Inc. (CCL)	1
Curtis-Straus LLC (CSL)	1
FM Global Technologies LLC (FM)	2
Intertek Testing Services NA, Inc. (ITSNA)	13
MET Laboratories, Inc. (MET)	1
National Technical Systems, Inc. (NTS)	1
NSF International (NSF)	1
SGS U.S. Testing Co., Inc. (SGSUS)	1
Southwest Research Institute (SwRI)	1
TUV America, Inc. (TUVAM)	3
TUV Product Services GmbH (TUVPSG)	1
TUV Rheinland of North America, Inc. (TUV)	1
Underwriters Laboratories Inc. (UL)	15
Wyle Laboratories, Inc. (WL)	1
Total (15 NRTLs)	49

Source: OSHA Directorate of Technical Support and Emergency Management.

Costs

The Agency estimated in 2000 that it would collect approximately $239,000 in fees annually (65 FR 46815). OSHA updated its fee schedule in February, 2007, and showed total estimated program costs of approximately $755,000 (72 FR 7469), estimating that these updated fees would enable it to collect only about half of these costs (*i.e.,* $380,000). As Table 1 above shows, the revisions made in this final rule, including revisions to calculating OSHA costs and updating Federal employee salary levels, could increase the fees collected to about $1,096,000. In comparison, if OSHA updated costs using the original calculation method (without adjustment for ancillary activities and leave), and included the increase in staff resources, the total fees collected would only increase to about $583,000. The impact of the increase, when fully implemented, will be $513,000 ($1,096,000 minus $583,000). Because OSHA's analysis evaluates the impact of the final rule as if the full increase during the third year was in

effect, the impact will actually be less during the first two years after the rule's effective date because OSHA is phasing in the fee increase. In addition, OSHA's analysis evaluates the total impact on existing NRTLs and on new applicants. Accordingly, the actual impact on existing NRTLs will be less because new applicants will pay some of the increased fees.

Economic Impacts

The fee increase will have only a minor impact on industry revenues and profits. NAICS 54138 ("Testing Laboratories") had $12.3 billion in revenues in 2007 (updated from the PEA) (U.S. Census Bureau, 2007 Economic Census). In the 2000 rulemaking, as here, the Agency estimated that net before-tax profits were 5.7 percent of revenues (Robert Morris Associates, Annual Statement Studies, Reference 2). The Agency, therefore, estimates 2007 industry before-tax profits as $701 million (5.7% of $12.3 billion). The entire $1,096,000 million in user fees represents 0.00009, or 0.009 percent, of industry revenues ($1.09 million/$12.3 billion) and 0.00155, or 0.155 percent, of industry profits (1.09/701). Thus, the impact of the additional new user fees of $513,000 will be even less. The Agency concludes that the changes to the fee calculation, and the resulting increase in fees, are economically feasible for the industry.

Average cost per affected firm of the increase in NRTL fees is about $73,067 ($1,096,000/15); while average cost per affected NRTL establishment (site) is about $22,367 ($1,096,000/49). As a result, OSHA expects larger firms with multiple recognized sites to have higher total user fees. The Agency believes that the increase in NRTL user fees will have little, if any, impact on the affected firms because demand for NRTL services continues to grow, and there was no apparent adverse affect from increasing NRTL fees in 2000 and 2007.

Any impact on the NRTLs depends on whether the NRTLs can raise prices to their customers. The Agency concludes that there are no good substitutes for the certification supplied by NRTLs, and it is likely that the NRTLs will pass the higher user fees on to the large number of NRTL customers via small price increases. The Agency concludes that the new, higher NRTL fees will have little economic impact on the affected firms and establishments.

Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), each Federal agency must assess the impact of its rules on small entities, and prepare a final regulatory flexibility analysis unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, the Agency also estimated in this final rule the relative effect of the new user fees on small businesses. In the original fees rulemaking in 2000, OSHA defined small businesses as those businesses with less than $5 million in sales (the Small Business Administration (SBA) criterion for the industry, see SBA Web site Reference 3 below). These businesses have fewer than 100 employees and average revenue of about $2.4 million. In the 2000 rulemaking, OSHA estimated user fees to be about $6,000 per "small" testing laboratory, which was less than 0.3 percent of average small-business revenues, and less than 5 percent of before-tax profits (Table 6, 65 FR 46817). The February 15, 2007, revision (73 FR 7468) raised the average establishment's fee to about $7,700 ($380,000/49). The higher user fees adopted by the Agency herein increased the expected average user fee for a small testing laboratory to about $22,367.

Revenues for the industry also increased, from $5 billion in 1992, to an estimated $12.3 billion in 2007 (1992 and 2007 Economic Census). Similarly, the SBA size criterion of a small business in the testing-laboratory industry increased to $11 million in annual revenues (SBA Web site; see link under "References" below). The Agency estimates that the new user fees still represent less than 1 percent of revenues and 5 percent of profits for small businesses in this industry. The marginal increase in user fees, which is about $14,667 per testing laboratory (to $22,367 from $7,700), is a small fraction of current revenues and profits. The economic costs are less than 1 percent of revenues and 5 percent of before-tax profits, and the Agency concludes that these NRTLs will pass the costs on to the firms' customers. The Agency, therefore, certifies that the higher NRTLs fees will not have a significant impact on a substantial number of small entities. The Agency concludes that 13 of the 15 affected NRTLs are small entities, as defined by current SBA criterion. Finally, as noted in the 2000 rulemaking (65 FR 46797), the collection of user fees from NRTLs is not a new cost to society, but represents a transfer of the governmental cost of the NRTL Program from taxpayers to an industry directly consuming government services.

OSHA did not receive any comments on the initial regulatory flexibility analysis or the economic analysis published in the proposal.

References

1. U.S. Department of Commerce, Bureau of the Census, 1992 Census of Service Industries: Industry Series: SC92–S–1, –4, –5. Washington, DC, February 1995.
2. Risk Management Associates (formerly Robert Morris Associates), Annual Statement Studies, September 1995.
3. U.S. Small Business Administration Web site *http://www.sba.gov.* Table of Small Business Size Standards Matched to North American Industry Classification System Codes *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

XI. Unfunded Mandates Reform Act

For the purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501, *et seq.*), this rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or an increased expenditure by the private sector of more than $100 million.

XII. Paperwork Reduction Act

This rule does not impose or remove any information collection requirements for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30. Under the Office of Management and Budget (OMB) control number 1218–0147, OSHA has authority to collect information for purposes of NRTL Program activities.

XIII. Federalism

OSHA reviewed this final rule in accordance with Executive Order 13132. This final rule only sets fees for services provided by the Federal government to private entities and has no impact on Federalism. The rule does not limit or restrict State policy options.

XIV. State Plan States

This final rule will not affect the 27 States and Territories that have OSHA-approved occupational safety and health plans. Twenty-two of these States and Territories operate OSHA-approved State Plans covering both private- and public-sector employees: Alaska; Arizona; California; Hawaii; Indiana; Iowa; Kentucky; Maryland; Michigan; Minnesota; Nevada; New Mexico; North Carolina; Oregon; Puerto Rico; South Carolina; Tennessee; Utah; Vermont; Virginia; Washington; and Wyoming. Four States (Connecticut, Illinois, New Jersey, and New York) plus the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

XV. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on February 16, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

List of Subjects in 29 CFR Part 1910

Fees, Occupational safety and health, Product testing and certification, Safety, Testing laboratories.

For the reasons stated in the preamble of this final rule, OSHA amends subpart A of 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General [Amended]

■ 1. Revise the authority citation for subpart A to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), and 4–2010 (75 FR 55355), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); Pub. L. 111–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. In § 1910.7:

■ a. Revise paragraph (f)(1) introductory text;

■ b. Revise the first sentence of paragraph (f)(2) introductory text;

■ c. Revise paragraph (f)(3)(i); and

■ d. Revise paragraph (f)(4).

The revisions read as follows:

§ 1910.7 Definition and requirements for a nationally recognized testing laboratory.

* * * * *

(f) * * *

(1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA in advance of the provision of those services. OSHA will assess fees for the following services:

* * * * *

(2) The fee schedule established by OSHA reflects the full cost of performing the activities for each service listed in paragraph (f)(1) of this section. * * *

* * * * *

(3)(i) OSHA will review the full costs periodically and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated full costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation shown in paragraph (f)(4) of this section.

* * * * *

(4) OSHA will implement periodic review, and fee assessment, collection, and payment, as follows:

Milestones/Dates	Action required
I. Periodic Review of Fee Schedule	
When review completed	OSHA will publish any proposed new fee schedule in the **Federal Register** if OSHA determines that costs warrant changes in the fee schedule.
Fifteen days after publication	Comments due on the proposed new fee schedule.
When OSHA approves the fee schedule.	OSHA will publish the final fee schedule in the **Federal Register**, making the fee schedule effective on a specific date.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees in the fee schedule that are due when submitting an application; OSHA will not begin processing the application until it receives the fees.
Before assessment performed	Applicant must pay the estimated staff time and travel costs for its assessment based on the fees in effect at the time of the assessment. Applicant also must pay the fees for the final report and **Federal Register** notice, and other applicable fees, as specified in the fee schedule. OSHA may cancel an application if the applicant does not pay these fees, or any balance of these fees, when due.
III. Audit Fees	
Before audit performed	NRTL must pay the estimated staff time and travel costs for its audit based on the fees in effect at the time of the audit. NRTL also must pay other applicable fees, as specified in the fee schedule. After the audit, OSHA adjusts the audit fees to account for the actual costs for travel and staff time.
On due date	NRTL must pay the estimated audit fees, or any balance due, by the due date established by OSHA; OSHA will assess a late fee if NRTL does not pay audit fees (or any balance of fees due) by the due date. OSHA may still perform the audit when an NRTL does not pay the fees or does not pay them on time.
Thirty days after due date or, if earlier, date NRTL refuses to pay.	OSHA will begin processing a notice for publication in the **Federal Register** announcing its plan to revoke recognition for NRTLs that do not pay the estimated audit fees and any balance of audit fees due.

Note: For the purposes of 29 CFR 1910.7(f)(4), "days" means "calendar days," and "applicant" means "the NRTL" or "an applicant for NRTL recognition."

* * * * *

[FR Doc. 2011–3937 Filed 2–24–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, and 1028

RIN 1506–AA92

Transfer and Reorganization of Bank Secrecy Act Regulations—Technical Amendment.

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule as a technical amendment to new Chapter X of Title 31 of the Code of Federal Regulations, which was published on October 26, 2010. After that date, FinCEN published two final rules in Part 103 of Title 31 of the Code of Federal Regulations, one concerning mutual funds and the other concerning the confidentiality of a report of suspicious activity (SAR). This final rule moves the SAR confidentiality rule from Part 103 to new Chapter X and addresses the compliance date of the mutual fund rule. Additionally, the Chapter X Final Rule contained an inadvertent typographical error that omitted several sections from Subpart C of Part 1026 Rules for Futures Commission Merchants and Introducing Brokers in Commodities. This final rule corrects those omissions.

DATES: *Effective Date:* March 1, 2011.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN (800) 949–2732 and select option 6.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2010, FinCEN issued a final rule ("the Chapter X Final Rule"), creating a new Chapter X in title 31 of the Code of Federal Regulations (CFR) for Bank Secrecy Act (BSA) regulations. As discussed in the Chapter X Final Rule, FinCEN is reorganizing its regulations in new Chapter X to make them more accessible for covered individuals and financial institutions. The reorganization is not intended to have any substantive effect on the BSA regulations. Chapter X will be effective on March 1, 2011.[1]

On April 14, 2010, FinCEN issued a final rule to include mutual funds within the general definition of "financial institution" in the BSA regulations.[2] On October 15, 2010, FinCEN published a final rule extending the compliance date for those provisions of 31 CFR 103.33 that apply to mutual funds from January 10, 2011 to April 10, 2011; however, this extension of the compliance date has not otherwise amended the applicable regulation.[3] The regulatory changes made by including mutual funds within the general definition of "financial institution" were contained in the Chapter X Final Rule. The extended compliance date for these provisions still applies even though they have moved to 31 CFR Chapter X.

On December 3, 2010, FinCEN issued a final rule to amend the BSA regulations regarding the confidentiality of a report of suspicious activity ("SAR"). To reflect the reorganization of BSA rules in Chapter X, FinCEN is issuing this technical amendment rule to move the revised SAR confidentiality rules, without any change to their applicability date, to Chapter X.

As published, the Chapter X Final Rule contains omissions from Subpart C of Part 1026 Rules for Futures Commission Merchants and Introducing Brokers in Commodities. This final rule corrects those omissions.

II. Effective Date

The effective date of this technical amendment to Chapter X will be March 1, 2011. As noted above, this technical amendment does not affect any of the applicability dates of the rules that are being moved to Chapter X by this technical amendment.

III. Regulatory Matters

A. Executive Order 12866

It has been determined that this rulemaking is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

B. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under Section 202 and has concluded that on balance the rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 602 *et seq.*), FinCEN certifies that this final regulation likely will not have a significant economic impact on a substantial number of small entities. The regulatory changes in this final rule merely restructure and re-codify existing regulations and do not alter current regulatory obligations.

D. Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). The information collection requirements for the Bank Secrecy Act, currently codified at 31 CFR Part 103, were previously approved by the Office of Management and Budget under OMB Control numbers 1506–0001 through 1506–0046. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Parts 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, and 1028

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth above, 31 CFR Chapter X, published October 26, 2010 (75 FR 65842), is amended as follows:

PART 1020—RULE FOR BANKS

■ 1. The authority citation for part 1020 is added to read as follows:

[1] *See* 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule).

[2] *See* 75 FR 19241 (April 14, 2010) (Final Rule defining Mutual Funds as Financial Institutions).

[3] *See* 75 FR 63382.

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 1020.320 is amended by:
■ a. Revising the last sentence of paragraph (d); and
■ b. Revising paragraphs (e) and (f); and
■ c. Adding new paragraph (g), to read as follows:

§ 1020.320 Reports by banks of suspicious transactions.

* * * * *

(d) * * * A bank shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by banks*—(i) *General rule.* No bank, and no director, officer, employee, or agent of any bank, shall disclose a SAR or any information that would reveal the existence of a SAR. Any bank, and any director, officer, employee, or agent of any bank that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a bank, or any director, officer, employee, or agent of a bank, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the bank complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a bank, or any director, officer, employee, or agent of the bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A bank, and any director, officer, employee, or agent of any bank, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Banks shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

PART 1021—RULES FOR CASINOS AND CARD CLUBS

■ 3. The authority citation for part 1021 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 4. Section 1021.320 is amended by:
■ a. Revising the last sentence of paragraph (d)
■ b. Revising paragraph (e);
■ c. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h);
■ d. Adding new paragraph (f); and
■ e. Revising newly designated paragraph (g).

§ 1021.320 Reports by casinos of suspicious transactions.

* * * * *

(d) * * * A casino shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that the casino complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by casinos*—(i) *General rule.* No casino, and no director, officer, employee, or agent of any casino, shall disclose a SAR or any information that would reveal the existence of a SAR. Any casino, and any director, officer, employee, or agent of any casino that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported

suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a casino, or any director, officer, employee, or agent of a casino, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that casino complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a casino, or any director, officer, employee, or agent of the casino, of a SAR, or any information that would reveal the existence of a SAR, within the casino's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act (BSA). For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A casino, and any director, officer, employee, or agent of any casino, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Casinos shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

* * * * *

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

■ 5. The authority citation for part 1022 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 6. Section 1022.320 is amended by:
■ a. Revising the last sentence of paragraph (c);
■ b. Revising paragraph (d);
■ c. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);
■ d. Adding new paragraph (e); and
■ e. Revising newly designated paragraph (f), to read as follows:

§ 1022.320 Reports by money services businesses of suspicious transactions.

* * * * *

(c) * * * A money services business shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by money services businesses*—(i) *General rule.* No money services business, and no director, officer, employee, or agent of any money services business, shall disclose a SAR or any information that would reveal the existence of a SAR. Any money services business, and any director, officer, employee, or agent of any money services business that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a money services business, or any director, officer, employee, or agent of a money services business, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a money services business, or any director, officer, employee, or agent of the money services business, of a SAR, or any information that would reveal the existence of a SAR, within the money services business's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would

reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A money services business, and any director, officer, employee, or agent of any money services business, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Money services businesses shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

* * * * *

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

■ 7. The authority citation for part 1023 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 8. Section 1023.320 is amended by revising the last sentence in paragraph (d), and by revising paragraphs (e), (f), and (g) to read as follows:

§ 1023.320 Reports by brokers or dealers in securities of suspicious transactions.

* * * * *

(d) * * * A broker-dealer shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act, upon request; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities and Exchange Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by brokers or dealers in securities.* (i) *General rule.* No broker-dealer, and no director, officer, employee, or agent of any broker-dealer, shall disclose a SAR or any information that would reveal the existence of a SAR. Any broker-dealer, and any director, officer, employee, or agent of any broker-dealer that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a broker-dealer, or any director, officer, employee, or agent of a broker-dealer, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities Exchange Commission; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a broker-dealer, or any director, officer, employee, or agent of the broker-dealer, of a SAR, or any information that would reveal the existence of a SAR, within the broker-dealer's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by Self-Regulatory Organizations.* Any self-regulatory organization registered with the Securities and Exchange Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties with the consent of the Securities Exchange Commission, in a manner consistent with Title II of the Bank Secrecy Act. For purposes of this section, "self-regulatory duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability.* A broker-dealer, and any director, officer, employee, or agent of any broker-dealer, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Broker-dealers shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

* * * * *

PART 1024—RULES FOR MUTUAL FUNDS

■ 9. The authority citation for part 1024 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 10. Section 1024.320 is amended by:

■ a. Revising the last sentence of paragraph (c); and
■ b. Revising paragraphs (d), (e), and (f), to read as follows:

§ 1024.320 Reports by mutual funds of suspicious transactions.

* * * * *

(c) * * * The mutual fund shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by mutual funds*—(i) *General rule.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, shall disclose a SAR or any information that would reveal the existence of a SAR. Any mutual fund, and any director, officer, employee, or agent of any mutual fund that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a mutual fund, or any director, officer, employee, or agent of a mutual fund, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by a mutual fund, or any director, officer, employee, or agent of the mutual fund, of a SAR, or any information that would reveal the existence of a SAR, within the mutual fund's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A mutual fund, and any director, officer, employee, or agent of any mutual fund, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Mutual funds shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

* * * * *

PART 1025—RULES FOR INSURANCE COMPANIES

■ 11. The authority citation for part 1025 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 12. Section 1025.320 is amended by:
■ a. Revising the last sentence of paragraph (d);
■ b. Revising paragraph (e);
■ c. Redesignating paragraphs (f) through (h) as paragraphs (g) through (i);
■ d. Adding new paragraph (f); and
■ e. Revising newly designated paragraph (g), to read as follows:

§ 1025.320 Reports by insurance companies of suspicious transactions.

* * * * *

(d) * * * An insurance company shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by insurance companies*—(i) *General rule.* No insurance company, and no director, officer, employee, or agent of any insurance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any insurance company, and any director, officer, employee, or agent of any insurance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an insurance company, or any director, officer, employee, or agent of an insurance company, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the

institution complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by an insurance company, or any director, officer, employee, or agent of the insurance company, of a SAR, or any information that would reveal the existence of a SAR, within the insurance company's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* An insurance company, and any director, officer, employee, or agent of any insurance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Insurance companies shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

* * * * *

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

■ 13. The authority citation for part 1026 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 14. Sections 1026.311, 1026.312, 1026.313 and 1026.314 are added to Subpart C to read as follows:

§ 1026.311 Filing obligations.

Refer to § 1010.311 of this Chapter for reports of transactions in currency filing obligations for futures commission merchants and introducing brokers in commodities.

§ 1026.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transactions in currency filed by futures commission merchants and introducing brokers in commodities.

§ 1026.313 Aggregation.

Refer to § 1010.313 of this Chapter for reports of transactions in currency aggregation requirements for futures commission merchants and introducing brokers in commodities.

§ 1026.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for futures commission merchants and introducing brokers in commodities.

■ 15. Section 1026.320 is amended by revising the last sentence in paragraph (d), and by revising paragraphs (e), (f), and (g) to read as follows:

§ 1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

* * * * *

(d) * * * An FCM or IB–C shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB–C for compliance with the BSA, upon request; or to any registered futures association or registered entity (as defined in the Commodity Exchange Act, 7 U.S.C. 21 and 7 U.S.C. 1(a)(29)) (collectively, a self-regulatory organization ("SRO")) that examines the FCM or IB–C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by futures commission merchants and introducing brokers in commodities*—(i) *General rule.* No FCM or IB–C, and no director, officer, employee, or agent of any FCM or IB–C, shall disclose a SAR or any information that would reveal the existence of a SAR. Any FCM or IB–C, and any director, officer, employee, or agent of any FCM or IB–C that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of Construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an FCM or IB–C, or any director, officer, employee, or agent of an FCM or IB–C, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB–C for compliance with the BSA; or to any SRO that examines the FCM or IB–C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by an FCM or IB–C, or any director, officer, employee, or agent of the FCM or IB–C, of a SAR, or any information that would reveal the existence of a SAR, within the FCM's or IB–C's corporate organizational structure for purposes consistent with Title II of the BSA as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director,

officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the BSA. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by Self-Regulatory Organizations.* Any self-regulatory organization registered with or designated by the Commodity Futures Trading Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties upon the request of the Commodity Futures Trading Commission, in a manner consistent with Title II of the BSA. For purposes of this section, "self-regulatory duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability.* An FCM or IB–C, and any director, officer, employee, or agent of any FCM or IB–C, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* FCMs or IB–Cs shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

* * * * *

PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

■ 16. The authority citation for part 1027 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

■ 17. The authority citation for part 1028 is added to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

Dated: February 16, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–4061 Filed 2–24–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Naval Surface Warfare Center, Upper Machodoc Creek and the Potomac River, Dahlgren, VA; Danger Zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations for the existing danger zone in the vicinity of Naval Surface Warfare Center, Dahlgren, in King George County, Virginia. The amendment changes the description of the hazardous operations in the area, the hours of operation, and expands the boundaries of a portion of the danger zone. The amendment is necessary to protect the public from potentially hazardous conditions which may exist as a result of use of the areas by the United States Navy.

DATES: *Effective Date:* March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil,* or Mr. Robert Berg, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7793 or by e-mail at *robert.a.berg@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at 33 CFR 334.230 to: Expand the description of continuing hazardous operations in the danger zone to include firing of large or small caliber guns and projectiles, aerial bombing, directed energy technology, and manned or unmanned water craft operations; expand the Middle Danger Zone farther into Upper Machodoc Creek where operations involving directed energy, watercraft maneuvers and transportation of explosives are conducted; add a 100-yard buffer to prevent public contact with unexploded ordinance along the shoreline of the Naval Facility within the Middle Danger Zone; and extend normal hours of operation of hazardous operations from 4 p.m. to 5 p.m. The danger zone represents a public safety buffer beyond the physical boundaries of the test range to further reduce the safety threat to the boating public.

The proposed rule was published in the November 10, 2010, issue of the **Federal Register** (75 FR 69033) with the docket number COE–2010–0038 and no comments were received.

Procedural Requirements

a. Review Under Executive Order 12866

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The economic impact of the amendment to this danger zone does not have an effect on the public, does not result in a navigational hazard, or interfere with existing waterway traffic. Therefore, this final rule does not have a significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined the amendment does not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period closed. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise paragraph (a) of § 334.230 to read as follows:

§ 334.230 Potomac River.

(a) *Naval Surface Warfare Center, Dahlgren, VA*—(1) *The areas.* Portions of the Upper Machodoc Creek and Potomac River near Dahlgren, VA as described below:

(i) *Lower zone.* The entire portion of the lower Potomac River between a line from Point Lookout, Maryland, to Smith Point, Virginia, and a line from Buoy 14 (abreast of St. Clements Island) to a point near the northeast shore of Hollis Marsh at latitude 38°10′00″, longitude 76°45′22.4″. Hazardous operations are conducted in this zone at infrequent intervals.

(ii) *Middle zone.* Beginning at the intersection of the Harry W. Nice Bridge with the Virginia shore; thence to Light 33; thence to latitude 38°19′06″, longitude 76°57′06″ which point is about 3,300 yards east-southeast of Light 30; thence to Line of Fire Buoy O, about 1,150 yards southwest of Swan Point; thence to Line of Fire Buoy M, about 1,700 yards south of Potomac View; thence to Line of Fire Buoy K, about 1,400 yards southwesterly of the lower end of Cobb Island; thence to Buoy 14, abreast of St. Clements Island, thence southwest to a point near the northeast shore of Hollis Marsh at latitude 38°10′00″; longitude 76°45′22.4″; thence northwest to Line of Fire Buoy J, about 3,000 yards off Popes Creek, Virginia; thence to Line of Fire Buoy L, about 3,600 yards off Church Point; thence to Line of Fire Buoy N, about 900 yards off Colonial Beach; thence to Line of Fire Buoy P, about 1,000 yards off Bluff Point; thence northwest to latitude 38°17′54″, longitude 77°01′02″, a point of the Virginia shore on property of the Naval Support Facility Dahlgren, a distance of about 4,080 yards; thence north along the Potomac shore of Naval Surface Warfare Center, Dahlgren to Baber Point; and thence west along the Upper Machodoc Creek shore of Naval Surface Warfare Center, Dahlgren to Howland Point at latitude 38°19′0.5″, longitude 77°03′23″; thence northeast to latitude 38°19′18″, longitude 77°02′29″, a point on the Naval Surface Warfare Center, Dahlgren shore about 350 yards southeast of the base of the Navy recreational pier. Hazardous operations are normally conducted in this zone daily except Saturdays, Sundays, and national holidays.

(iii) *Upper zone.* Beginning at Mathias Point, Va.; thence north to Light 5; thence north-northeast to Light 6; thence east-southeast to Lighted Buoy 2, thence east-southeast to a point on the Maryland shore at approximately latitude 38°23′35.5″, longitude 76°59′15.5″; thence south along the Maryland shore to, and then along, a line passing through Light 1 to the Virginia shore, parallel to the Harry W. Nice Bridge; thence north with the Virginia shore to the point of beginning. Hazardous operations are conducted in this zone at infrequent intervals.

(2) *The regulations.* (i) Hazardous operations normally take place between the hours of 8 a.m. and 5 p.m. daily except Saturdays, Sundays and national holidays, with infrequent night firing between 5 p.m. and 10:30 p.m. During a national emergency, hazardous operations will take place between the hours of 6 a.m. and 10:30 p.m. daily except Sundays. Hazardous operations may involve firing large or small caliber guns and projectiles, aerial bombing, use of directed energy, and operating manned or unmanned watercraft.

(ii) When hazardous operations are in progress, no person, or fishing or oystering vessels shall operate within the danger zone affected unless so authorized by the Naval Surface Warfare Center, Dahlgren's patrol boats. Oystering and fishing boats or other craft may cross the river in the danger zone only after they have reported to the patrol boat and received instructions as to when and where to cross. Deep-draft vessels using dredged channels and propelled by mechanical power at a speed greater than five miles per hour may proceed directly through the danger zones without restriction except when notified to the contrary by the patrol boat. Unless instructed to the contrary by the patrol boat, small craft navigating up or down the Potomac River during hazardous operations shall proceed outside of the northeastern boundary of the Middle Danger Zone. All craft desiring to enter the Middle Danger Zone when proceeding in or out of Upper Machodoc Creek during hazardous operations will be instructed by the patrol boat; for those craft that desire to proceed in or out of Upper Machodoc Creek on a course between the western shore of the Potomac River and a line from the Main Dock of Naval Surface Warfare Center, Dahlgren to Line of Fire Buoy P, clearance will be granted to proceed upon request directed to the patrol boat.

(iii) Due to hazards of unexploded ordnance, no person or craft in the Middle Danger Zone shall approach closer than 100 yards to the shoreline of Naval Surface Warfare Center, Dahlgren, previously known as the Naval Surface Weapons Center.

(3) *Enforcement.* The regulations shall be enforced by the Commander, Naval Surface Warfare Center, Dahlgren and such agencies as he/she may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a 32 point red light shall be displayed at the mast head. Naval Surface Warfare Center, Dahlgren (Range Control) can be contacted by Marine VHF radio (Channel 16) or by telephone (540) 653–8791.

(4) *Exceptions.* Nothing in this regulation shall be intended to prevent commercial fishing or the lawful use of approved waterfowl hunting blinds along the shorelines of Naval Surface Warfare Center, Dahlgren, provided that all necessary licenses and permits have been obtained from the Maryland Department of Natural Resources, the Virginia Department of Game and Inland Fisheries, or the Potomac River Fisheries Commission. Waterfowl hunters shall provide a completed copy of their blind permit to the Natural Resources Manager at Naval Surface Warfare Center, Dahlgren. Commercial fishermen and waterfowl hunters must observe all warnings and range clearances, as noted herein. Federal, State and local law enforcement agencies are exempt from the provisions of paragraph (a) of this section.

* * * * *

Dated: February 22, 2011.

Jonathan A. Davis,

Deputy Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2011–4280 Filed 2–24–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Area, Potomac River, Marine Corps Base Quantico, Quantico, VA

AGENCY: United States Army Corps of Engineers, Department of Defense

ACTION: Final rule; correction.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is correcting a final rule that appeared in the **Federal Register** of February 4, 2011 (76 FR 6327), establishing a restricted area in the waters of the Potomac River extending offshore from the Marine Corps Air Facility (MCAF) at Marine Corps Base Quantico (MCB Quantico), located in Quantico, Virginia.

DATES: Effective March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Steve Elinsky, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, at 410–962–4503 or by e-mail at *steve.elinsky@usace.army.mil.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–2478 appearing on page 6327 in the **Federal Register** of Friday, February 4, 2011, the following correction is made:

§ 334.235 [Corrected]

On page 6328, in the third column, in § 334.235, paragraph (b)(2), the sentence "In addition, lighted, floating, small craft intrusion barriers will be placed across the Chopawamsic Creek channel at the entrance to the channel from the Potomac River and immediately west of the CSX railroad bridge." is corrected to read "In addition, floating small craft intrusion barriers marked with reflective material will be placed across the Chopawamsic Creek channel at the entrance to the channel from the Potomac River and immediately west of the CSX railroad bridge."

Dated: February 22, 2011.

Jonathan A. Davis,

Deputy Chief, Operations and Regulatory Directorate of Civil Works.

[FR Doc. 2011–4277 Filed 2–24–11; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 60 (§ 60.1 to end of part 60 sections), revised as of July 1, 2010:

1. On page 334, at the end of § 60.101a, an effective date note is added to read as follows:

§ 60.101a Definitions.

* * * * *

Effective Date Note: At 73 FR 78552, Dec. 22, 2008, in § 60.101a the definition of "flare" was stayed from Feb. 24, 2009 until further notice.

2. On page 337, at the end of § 60.102a, an effective date note is added to read as follows:

§ 60.102a Emissions limitations.

* * * * *

Effective Date Note: At 73 FR 78552, Dec. 22, 2008, in § 60.102a, paragraph (g) was stayed from Feb. 24, 2009 until further notice.

3. On page 353, at the end of § 60.107a, an effective date note is added to read as follows:

§ 60.107a Monitoring of emissions and operations for fuel gas combustion devices.

* * * * *

Effective Date Note: At 73 FR 78552, Dec. 22, 2008, in § 60.107a, paragraphs (d) and (e) were stayed from Feb. 24, 2009 until further notice.

[FR Doc. 2011–4310 Filed 2–24–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2011–0004]

RIN 2127–AK23

Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference

Correction

In rule document 2011–547, appearing on pages 3212–3305 of the issue of Wednesday, January 19, 2011, make the following change:

§ 571.226 [Corrected]

On page 3301, in the first column, above the paragraph headed "S8.4 *Vehicles manufactured on or after September 1, 2015 and before September 1, 2016.*", insert the following text:

§ 571.226 [Corrected]

* * * * *

S8.3 *Vehicles manufactured on or after September 1, 2014 and before September 1, 2015.* Subject to S8.9, for vehicles manufactured on or after September 1, 2014 and before September 1, 2015, the number of vehicles complying with S4.2 shall be not less than 50 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

* * * * *

[FR Doc. C1–2011–547 Filed 2–24–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–XA174

Hawaii Bottomfish and Seamount Groundfish Fisheries; Fishery Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial and non-commercial fisheries in the main Hawaiian Islands

fishery for seven deepwater bottomfish species ("Deep 7" bottomfish) as a result of reaching the total allowable catch (TAC) for the 2010–11 fishing year.

DATES: Effective March 12, 2011, through August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries Division, NMFS Pacific Islands Region, 808–944–2108.

SUPPLEMENTARY INFORMATION: Bottomfish fishing in Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the Hawaii FEP appear at 50 CFR part 665 and at subpart H of 50 CFR part 600.

The regulations at § 665.211 authorize NMFS and the Council to set a TAC limit for Deep 7 bottomfish for the fishing year, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Epinephelus quernus*).

When the TAC limit for the year is projected to be reached, the NMFS Regional Administrator is required to publish notification that the fishery will be closed beginning on a specified date, not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the TAC is reached. During the closure, no person may fish for, possess, or sell any Deep 7 bottomfish in the Main Hawaiian Islands, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally permitted to fish in the Pacific Remote Island Areas, and conducted in compliance with all other laws and regulations, are not affected by this closure. There is no prohibition on fishing for or selling non-Deep 7 bottomfish species throughout the year.

The TAC limit for the 2010–2011 fishing year was recommended by the Council, and specified by NMFS, as 254,050 lb (115,235 kg) of Deep 7 bottomfish (75 FR 53606; September 1, 2010). Progress toward the TAC was monitored using information reported by holders of State of Hawaii commercial marine licenses through monthly catch reports submitted to the State. Based on this information, the TAC for the 2010–11 fishing year is projected to be reached on or before March 12, 2011.

In accordance with § 665.211(c), this document serves as advance notification to fishermen, the fishing industry, and the general public that the Main Hawaiian Islands Deep 7 bottomfish fishery will be closed from March 12, 2011, through the remainder of the fishing year. The 2011–12 fishing year is scheduled to open on September 1, 2011. The proposed TAC for the 2011–12 fishing year will be published in the **Federal Register** by August 31, 2011.

This action is required by § 665.211(c) and is exempt from review under Executive Order 12866.

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

Dated: February 22, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4293 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 38
Friday, February 25, 2011

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

DEPARTMENT OF THE INTERIOR

2 CFR Chapter XIV

25 CFR Chapters I, II, III and V, VI, VII

30 CFR Chapters II, IV, VII, and XII

36 CFR Chapter I

41 CFR Chapter 114

43 CFR Subtitle A and Chapters I and II

48 CFR Chapter 14

50 CFR Chapters I and IV

[Docket Number: DOI–2011–0001]

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Office of the Secretary, Interior.

ACTION: Request for information.

SUMMARY: The Department of the Interior (DOI) is preparing a preliminary plan to review its existing significant regulations in response to the President's Executive Order 13563 on improving regulation and regulatory review. The purpose of this regulatory review is to help DOI manage the Nation's public lands and national treasures, honor our tribal trust obligations, protect the environment and endangered species, distribute and monitor water resources, and help America become energy independent in ways that are more effective and less burdensome. DOI is asking for ideas and information from the public in preparing the plan and identifying opportunities to improve any of its significant regulations by modifying, streamlining, expanding, or repealing them.

DATES: You must submit any comments on or before March 28, 2011.

ADDRESSES: All comments must include "Comments on improving DOI's regulations—Docket Number DOI–2011–0001". You must submit comments by any (but only one) of the following methods:

- *Federal eRulemaking portal:* Go to *http://www.regulations.gov*, find Docket DOI–2011–0001, and follow the instructions for submitting your comments electronically.
- *Mail:* Regulatory Review, Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 7328, Washington, DC 20240.
- *Hand Delivery or Courier:* Regulatory Review, Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7311, 1849 C Street, NW., Washington, DC 20240.
- *E-mail: RegsReview@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Lawyer, Office of the Secretary, 202–208–3181, *Mark_Lawyer@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review," on January 18, 2011. He stated that our "regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation" and it must "use the best, most innovative, and least burdensome tools to achieve regulatory ends." The Executive Order directed agencies to develop and submit a preliminary plan within 120 days that will explain how they will review existing significant regulations and identify regulations that can be made more effective or less burdensome in achieving regulatory objectives.

Request for Information

This request to the public for information is DOI's first step in complying with the President's directive to develop a plan that will make the Department's regulations more effective and less burdensome. DOI is asking you to suggest how the Department can develop regulations to protect the environment, honor our trust obligations, manage public lands, protect endangered species, distribute and monitor water resources, and promote clean energy independence in ways that will work best for the American people. Knowledge about the full effects of regulations on people and the economy is widely dispersed in society. DOI recognizes that members of the public are likely to have useful information and perspectives about how it could streamline or improve its regulations. This request for information from the public will help the Department obtain information that will inform its decisions as the Department develops a plan to review its existing regulations.

Questions for the Public

DOI intends the questions below to elicit useful information as the Department develops a preliminary plan to review its significant regulations. These questions are not intended to be exhaustive. You may raise other issues or make suggestions unrelated to these questions that you believe would help the Department develop better regulations. Comments will be most helpful if they provide examples and a detailed explanation of how the suggestion will support DOI's mission in a way that is more efficient and less burdensome. DOI specifically asks you to provide comments related to the questions that follow to help the Department prepare a preliminary plan to review its significant regulations.

(1) How can DOI best review its existing rules in a way that will identify rules that should be changed, streamlined, consolidated, or removed? DOI encourages those submitting comments to include a proposed process under which review could be regularly undertaken.

(2) How can DOI reduce burdens and maintain flexibility and choice for the public in a way that will promote its mission?

(3) Does DOI have rules or guidance that are duplicative or that have conflicting requirements among its bureaus or with other agencies? If so, please specifically identify the rules or guidance and suggest ways DOI can streamline, consolidate, or make these regulations work better. Please suggest specific language that would make these rules or guidance more efficient and less burdensome where possible.

(4) Are there rules or reporting requirements that could be improved to accomplish their regulatory objectives better? If so, please specifically identify the rule or reporting requirement and suggest alternative language where possible.

(5) How can DOI best assure that its regulations are guided by objective scientific evidence?

(6) Are there better ways to encourage public participation and an open exchange of views when DOI engages in rulemaking?

(7) Is there a rule or guidance that is working well that DOI could use as a model for improving other regulations or guidance? If so, please specifically identify the rule or guidance and explain the aspects of the rule or guidance that work well and why you think it works well.

(8) How can DOI better scale its regulations to lessen the burdens imposed on small entities within the existing statutory requirements? Please identify any regulations that, under the applicable laws, could exempt small entities or provide more flexible or less burdensome requirements.

(9) Are DOI regulations and guidance written in language that is clear and easy to understand? Please identify specific regulations and guidance that are good candidates for a plain language re-write.

(10) What are some suggestions that DOI can use to assure that its regulations promote its mission in ways that are most efficient and least burdensome?

DOI will consider public input as we develop a plan to periodically review the Department's significant rules. The Department has created a Web site at *http//www.doi.gov/open/regsreview* to facilitate participation by the public. This website provides links to the Department's regulations and a link to an e-mail in-box at *RegsReview@ios.doi.gov* that interested parties may use to suggest, both during the comment period and on an ongoing basis, improvements to DOI's regulations.

The Department is issuing this request solely to seek useful information as it develops a plan to review its existing significant regulations. While responses to this request do not bind DOI to any further actions related to the response, all submissions will be made available to the public on *http://www.regulations.gov.*

Before including your 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 the public review, we cannot guarantee that we will be able to do so.

Authority: E.O. 13653, 76 FR 3821, Jan. 21, 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

Dated: February 18, 2011.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2011–4241 Filed 2–24–11; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–11–0005; NOP–11–01]

Regulatory Flexibility Act: Section 610 Review of National Organic Program Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Review and request for comments.

SUMMARY: This document announces the Agricultural Marketing Service's (AMS) plans to review the National Organic Program (NOP) regulations (7 CFR part 205). This review will be conducted under criteria contained in section 610 of the Regulatory Flexibility Act (RFA), as amended. The RFA provisions require that all Federal agencies review existing regulations that have a significant economic impact on a substantial number of small entities to determine whether the associated impact can be minimized.

DATES: Written comments must be received by April 26, 2011.

ADDRESSES: Interested persons may submit written comments on this review using the following addresses:

- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250.
- *Internet: http://www.regulations.gov.*

Written comments responding to this review should reference the document number (AMS–NOP–11–0005; NOP–11–01). It is our intention to have all comments concerning this review, including names and addresses when provided, whether submitted by mail or Internet available for viewing on the Regulations.gov (*http://www.regulations.gov*) Internet site. Comments submitted in response to this notice of review will also be available for viewing in person at USDA, AMS, National Organic Program, 1400 Independence Ave., SW., Room 2646–South Building, Washington, DC, from 9 a.m., to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this notice are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, PhD, Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268; telephone: (202) 720–3252; facsimile (202) 205–7808; or electronic mail: *Melissa.Bailey@usda.gov.*

SUPPLEMENTARY INFORMATION: The NOP is authorized by the Organic Foods Production Act (OFPA) of 1990, as amended (7 U.S.C. 6501–6522). The Agricultural Marketing Service (AMS) administers the NOP. Under the NOP, the AMS oversees national standards for the production, handling, and labeling of organically produced agricultural products. Final regulations implementing the National Organic Program (NOP) were published December 21, 2000 (65 FR 80548), and became effective on October 21, 2002.

On March 24, 2006, AMS published in the **Federal Register** (71 FR 14827), its schedule to review certain regulations, including the NOP regulations, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to periodically review regulations, irrespective of whether specific regulations meet the threshold requirement for mandatory review established by the RFA. As a result, the Agency is now conducting this review of the NOP regulations.

The purpose of the review is to determine whether the NOP regulations should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize the impacts on small entities. In conducting this review, the AMS will consider the following factors: (1) The continued need for the regulations; (2) the nature of complaints or comments received from the public concerning the regulations; (3) the complexity of the regulations; (4) the extent to which the regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the regulations have been evaluated or the degree to which technology, economic conditions, or

other factors have changed in the area affected by the regulations.

Written comments, views, opinions, and other information regarding the impact of the NOP regulations on small businesses are invited.

Dated: February 22, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4257 Filed 2–24–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM447 Special Conditions No. 25–11–06–SC]

Special Conditions: Gulfstream Model GVI Airplane; Electronic Systems Security Isolation or Protection From Unauthorized Passenger Systems Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. This airplane may have novel or unusual design features associated with connectivity of the passenger domain computer systems to the airplane critical systems and data networks. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by April 11, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM447, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM447. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Will Struck, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2764; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The GVI will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected networks. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight-safety related control, communication, and navigation systems (aircraft control domain),
2. Airline business and administrative support (airline information domain),
3. Passenger information and entertainment systems (passenger entertainment domain), and
4. The capability to allow access to or by external sources.

Discussion of Proposed Special Conditions

The proposed Model GVI integrated network configuration may allow increased connectivity with external network sources and will have more interconnected networks and systems, such as passenger entertainment and information services, than previous Gulfstream airplane models. This may allow the exploitation of network security vulnerabilities and increase

risks potentially resulting in unsafe conditions for the airplane and its occupants.

This potential exploitation of security vulnerabilities may result in intentional or unintentional destruction, disruption, degradation, or exploitation of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate these types of system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions and a means of compliance are proposed to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections between airplane systems and networks and the passenger entertainment domain.

Applicability

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the GVI airplanes.

The design must isolate or provide protection from any inadvertent or malicious change to, and any adverse effect on any systems, software, or data in the aircraft control domain or airline information domain from any point within the passenger entertainment domain.

Issued in Renton, Washington, on February 15, 2011.

KC Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4231 Filed 2–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM448 Special Conditions No. 25–11–07–SC]

Special Conditions: Gulfstream Model GVI Airplane; Electronic Systems Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. This airplane will have novel or unusual design features associated with the architecture and connectivity capabilities of the airplane's computer systems and networks, which may allow access by external computer systems and networks. Connectivity by external systems and networks may result in security vulnerabilities to the airplane's systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by April 11, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM448, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM448. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Will Struck, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2764; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If

the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The GVI will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected networks. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight-safety related control, communication, and navigation systems (aircraft control domain),
2. Airline business and administrative support (airline information domain),
3. Passenger information and entertainment systems (passenger entertainment domain), and
4. The capability to allow access to or by external sources.

Discussion of Proposed Special Conditions

The proposed Model GVI architecture and network configuration may allow increased connectivity to and access by external airplane sources and airline operations and maintenance systems to the aircraft control domain and airline information domain. The aircraft control domain and airline information domain perform functions required for the safe operation and maintenance of the airplane. Previously these domains had very limited connectivity with external sources.

The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane systems, data buses, and servers. Therefore, these special conditions and a means of compliance are proposed to ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

Applicability

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GVI airplanes.

1. The applicant must ensure electronic system security protection for the aircraft control domain and airline information domain from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats from external sources are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

Issued in Renton, Washington, on February 15, 2011.

KC Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4232 Filed 2–24–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2010–0683; FRL–9269–4]

Supplemental Proposed Rule of Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: On October 19, 2010, the Environmental Protection Agency (EPA) published a proposal to promulgate a source specific Federal Implementation Plan (FIP) requiring the Four Corners Power Plant (FCPP), located on the Navajo Nation, to achieve emissions reductions required by the Clean Air Act's Best Available Retrofit Technology (BART) provision. On November 24, 2010, Arizona Public Service (APS) acting on behalf of FCPP's owners submitted a letter to EPA offering an alternative proposal to reduce visibility-impairing pollution. In this action, EPA is supplementing our October 19, 2010 BART proposal with our technical evaluation of APS' alternative proposal. We are proposing to find that a different alternative emissions control strategy would achieve more progress than EPA's BART proposal towards achieving visibility improvements in the surrounding Class I areas.

DATES: Comments on this supplemental proposed rule must be submitted no later than May 2, 2011.

Open houses and public hearings will be held on the following dates:

Shiprock Chapter, Shiprock, New Mexico—March 29, 2011;

Nenahnezad Chapter, Fruitland, New Mexico—March 30, 2011;

Farmington, New Mexico—March 30, 2011;

Durango, Colorado—March 31, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0683, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions.

E-mail: r9air_fcppbart@epa.gov.

Mail or deliver: Anita Lee (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Hearings: EPA is holding public hearings in four locations in the Four Corners area to accept oral and written comments on our October 19, 2010 proposed rulemaking and this supplemental proposed rule. *See* the **SUPPLEMENTARY INFORMATION** for further information on the hearings.

The open houses and public hearings will be held at the following locations:

Shiprock Chapter, Shiprock, New Mexico—March 29, 2011, Open House from 3 p.m.–6 p.m. and Public Hearing from 7 p.m.–9 p.m. local time, Phil L. Thomas Performing Arts Center, Highway 64 West, Shiprock, New Mexico, 87420, (505) 368–2490;

Nenahnezad Chapter, Fruitland, New Mexico—March 30, 2011, combined Open House and Public Hearing from 9 a.m.–1 p.m. local time, Nenahnezad Chapter House, Multi-Purpose Room, Highway 64 to County Road 6675 to end of Navajo Route 365, (505) 960–9702;

Farmington, New Mexico—March 30, 2011, Open House from 3 p.m.–5 p.m. and Public Hearing from 6 p.m.–9 p.m. local time, San Juan College, Henderson Fine Arts Building Rooms 9006 and 9008, Farmington, New Mexico, 97402, (505) 326–3311;

Durango, Colorado—March 31, 2011, Open House from 3 p.m.–5 p.m. and Public Hearing from 6 p.m.–9 p.m. local time, Fort Lewis College, Center of Southwest Studies Lyceum Room, 1000 Rim Drive, Durango, Colorado, 81301, (970) 247–7456.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region IX, (415) 972–3958, *r9air_fcppbart@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we", "us", and "our" refer to EPA.

EPA is providing 30 days advance notice of our scheduled hearings and opening a comment period on this supplemental proposed rule that extends from the publication date of this document until May 2, 2011, which is 30 days after our last scheduled hearing, resulting in more than 60 days to comment on this supplemental proposed rule. On December 8, 2010, EPA extended the comment period for our October 19, 2010 BART proposal until March 18, 2011. EPA is accepting comment on both proposals concurrently. Accordingly, in this action, EPA is also extending the public comment period on the October 19, 2010 BART proposal until May 2, 2011.

EPA will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all oral and written comments received on our October 19, 2010 proposal and on this supplemental proposed rule. To provide opportunities for questions and discussion, EPA will hold open houses prior to, or concurrently with, the public hearings. During these open houses, EPA staff will be available to informally answer questions on our proposed action and this supplemental proposed rule. Any comments made to EPA staff during the open houses must still be provided formally in writing or orally during a public hearing in order to be considered in the record.

Oral testimony may be limited to 5 minutes for each commenter to address the proposal or this supplemental proposed rule. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments, in English or Diné, and data pertaining to our proposal at the Public Hearing. English-Diné translation services will be provided at both the Open Houses and the Public Hearings in Shiprock, Fruitland, and Farmington. English-Dine translation services will not be provided at the Durango Open House and Public Hearing unless it is requested by March 14, 2011. If you require a reasonable accommodation, by March 14, 2011, please contact Anita Lee using one of the methods provided in the **ADDRESSES** section of this supplemental proposed rule. Verbatim transcripts, in English, of the hearings and written statements will be included in the rulemaking docket.

The public hearings for the three evening events are scheduled to close at 9 p.m., but may close later, if necessary, depending on the number of speakers wishing to participate.

If you are unable to attend the public hearings but wish to submit written comments on the proposed rule or this supplemental proposed rule, you may submit comments, identified by docket number EPA–R09–OAR–2010–0683, by one of the following methods listed in the **ADDRESSES** section.

Table of Contents

I. Background and Summary

EPA's proposed BART determination, which was published on October 19, 2010, provided a thorough discussion of the legal and factual background concerning our proposed BART rulemaking and FCPP. 75 FR 64221. APS is the sole owner of Units 1–3, a partial owner of Units 4 and 5, and the operator of FCPP. APS provided an initial response to EPA's BART proposal during a meeting on November 9, 2010 and by letter dated November 24, 2010. The initial response indicated that APS had reached an agreement on November 8, 2010, to purchase the ownership interest in Units 4 and 5 from Southern California Edison (SCE). APS further announced that upon final authorization of purchasing SCE's interest in Units 4 and 5, APS would begin a process to shut down Units 1–3 that would be completed by the beginning of 2014. In addition, upon final authorization, APS would commence work in 2014 to install SCR on Units 4 and 5 with a schedule for the SCR to be fully installed and operational on both units by 2018. APS proposed a NO_X emissions limit of 0.11 lb/MMMBtu, to be achieved by the end of 2018. APS justified requesting its schedule of 2014 to shut down Units 1–3 and 2018 to install SCR on Units 4 and 5 based on its need to secure several Federal, State, and Tribal authorizations to execute this alternative emissions control strategy.

According to APS' calculations, under their alternative strategy, FCPP would, beginning in 2019, emit 2,650 tons per year (tpy) less NO_X pollution than under EPA's October 19, 2010 BART proposal. APS also provided a summary of the significant annual and cumulative (through 2037) reductions of NO_X, sulfur dioxide (SO_2), particulate matter (PM), mercury (Hg), water use, and carbon dioxide (CO_2) that would result from shutting down Units 1–3 and operating SCR on Units 4 and 5. EPA's October 19, 2010 BART proposal did not require reductions of SO_2, Hg, or CO_2 emissions or reductions in water use.

APS states that revenue associated with operating FCPP comprises roughly 35% of the Navajo Nation's general fund. FCPP and the mine supplying the coal provide about 1,000 jobs, the majority of which are filled by Native American employees. FCPP and the mine also pay significant taxes and generate other revenue for the area.

EPA requested APS to submit the emissions calculations and modeling files supporting the conclusions APS set forth in its letter of November 24, 2010. APS submitted those emissions calculations and modeling files to EPA on November 29, 2010 and December 3, 2010. The emission calculation spreadsheet is available in our electronic docket (EPA–R09–OAR–2010–0683, document number 0080.1—identified as an xlsx file), and the modeling files are available upon request.

EPA has conducted its own technical analysis of the alternative proposal APS put forward on November 24, 2010. Our analysis, as described in this supplemental proposed rule, finds that an alternative emission control strategy to shut down Units 1–3 by 2014 and operate SCR on Units 4 and 5 by July 31, 2018 to achieve a more stringent but still feasible NO_X emission limit of 0.098 lb/MMBtu will result in greater visibility improvement than both EPA's October 19, 2010 BART proposal and November 24, 2010 APS' alternative proposal.[1] Our analysis differs in some respects from APS regarding the emissions benefit and visibility improvement from APS' proposal. However, when viewing the combined short term and long term effect of the alternative emission control strategy, EPA is proposing to find that shutting down Units 1–3 in 2014 and operating SCR on Units 4 and 5 by July 31, 2018 will result in greater visibility improvement at the surrounding Class I areas.

FCPP is comprised of five coal-fired units of different sizes and ownership. Ownership of Units 4 and 5, the two largest units at FCPP at 750 MW each, is currently shared between six entities—SCE, APS, Public Service Company of New Mexico (PNM), Salt River Project (SRP), El Paso Electric Company (EPEC), and Tucson Electric Power (TEP). Table 1 provides a brief summary of characteristics of the five units.

TABLE 1—SUMMARY OF UNITS 1–5

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
Year Operation Began	1963	1963	1964	1969	1970
Capacity (MW)	170	170	220	750	750
Heat Input Rate (MMBtu/hr)	1,863	1,863	2,400	7,411	7,411
NO_X Baseline emission rate (lb/MMBtu)	0.78	0.64	0.59	0.49	0.49
PM Baseline emission rate (lb/MMBtu)	0.025	0.029	0.029	0.014	0.010
Ownership	APS—100%			SCE—48%, APS—15%, PNM—13%, SRP—10%, EPEC—7%, TEP—7%.	

Table 2 provides a summary of the annual and cumulative emissions and water use reductions that will result from APS' proposal. Table 2 shows the emission reductions as stated by APS in its submittal, however, for the cumulative NO_X emissions reduced, EPA believes with the correction of an evident calculation error on the part of APS this value should be 388,416 tons (16,184 tons per year × 24 years), not 104,958.

[1] EPA's revisions to APS' proposal is referred to throughout this notice as "the alternative emission control strategy".

TABLE 2—EMISSION REDUCTIONS ACHIEVED BY CLOSING UNITS 1–3, REPRODUCED FROM APS' NOVEMBER 24, 2010 SUBMITTAL [2]

	Annual	Cumulative
NO_X (tons)	16,184	104,958
SO_2 (tons)	2,852	68,448
PM (tons)	678	16,272
Hg (pounds)	361	8,664
Water use (acre-feet)	6,000	144,000
CO_2 (million tons)	5.2	125

II. Legal Background for Proposing To Approve APS' Alternative Emission Control Strategy as Achieving Better Progress Towards the National Visibility Goal

Section 169A(b)(2) of the Clean Air Act requires a complete implementation plan for visibility improvement to contain such emissions limits, schedules of compliance, and other measures that may be necessary to make reasonable progress towards the national visibility goal. The implementation plan provisions must include, as appropriate, BART under CAA section 169A(b)(2)(A) and a long term strategy under CAA section 169A(b)(2)(B).

In 1991, EPA considered a factual situation similar to the circumstances at hand. EPA had published a proposed rule requiring the owners and operators of Navajo Generating Station (NGS) to install emissions controls to reduce SO_2 emissions because those emissions from NGS were shown to impair visibility in the Grand Canyon National Park. 55 FR 5173 (Feb. 8, 1991). The proposed rulemaking included an SO_2 emission limit, based on analysis of several different levels of SO_2 reduction, as BART pursuant to authority in CAA Section 169A(b)(2)(A). 56 FR 5178. Before EPA finalized the rule, the owner and operator of NGS, along with several environmental groups, submitted an alternative plan to EPA. The alternative plan would provide greater emissions reductions of SO_2 at a lower cost than EPA's proposed rule. EPA published a Supplemental Notice seeking comments on the alternative plan. 56 FR 38399 (Aug. 13, 1991).

In the NGS Supplemental Notice, EPA examined its legal authority under Section 169A(b)(2). Id. Appendix B. EPA noted that in crafting the visibility reasonable progress requirements,

> Congress did not explicitly address, and apparently did not even consider, whether there could be greater visibility improvement at a lower cost in furtherance of the national goal through an implementation plan provision that relied more generally on subsection (b)(2), rather than on specific provisions of subparagraph (A) and/or subparagraph (B). Where Congress has not directly spoken to the precise question at issue, EPA may make a reasonable construction of the statute that is appropriate in the context of the particular program at issue. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–45 (1984).

Id. at 38403. EPA evaluated the alternative plan and agreed that it would provide greater visibility improvement at lower cost than EPA's proposed BART rulemaking. EPA's Supplemental Notice stated:

> Based on the staff conclusions regarding the factual circumstances of this case, EPA could reasonably find that the present alternative, with its higher expected visibility improvement and lower expected costs (in comparison to the February 1991 proposed rule), best fulfills the overarching statutory requirement in section 169A(b)(2)(which incorporates the more specific provisions of subparagraphs (A) and (B)) that implementation plan revisions adopted under subparagraphs 169A make "reasonable progress" toward the national visibility goal.
>
> *Id.*

EPA finalized the proposed rule for NGS in October 1991. 56 FR 50172 (Oct. 3, 1991). In the final rule, EPA adopted the rationale from the August 1991 Supplemental Notice that EPA had legal authority under section 169A(b)(2) to finalize an alternative to BART provided it made greater reasonable progress towards the national visibility goal. Id. at 50177.

The Central Arizona Project (CAP) petitioned the Ninth Circuit Court of Appeals to review EPA's final rule. The Ninth Circuit issued an opinion on March 25, 1993, upholding EPA's legal authority to finalize an alternative to BART as making reasonable progress where that alternative resulted in greater visibility improvement at a lower cost. *Central Arizona Water Conservation District* v. *United States Environmental Protection Agency,* 990 F.2d 1531 (9th Cir. Mar. 25, 1993). The Court noted that "[u]nder the unique circumstances of this case, however, EPA chose not to adopt the emission control limits indicated by BART analysis, but instead to adopt an emission limitations standard that would produce greater visibility improvement at a lower cost." Id. at 1543. The Court then held:

> Since the Act itself is ambiguous on the specific issue, we apply the Supreme Court's deferential standard from Chevron and hold that the agency's reliance on the "reasonable progress" provisions is a "permissible construction of the statute," 467 U.S. at 843, 104 S.Ct. at 2782, since "reasonable progress" is the overarching requirement that implementation plan revisions under 42 U.S.C. 7491(b)(2) must address.
>
> *Id.*

EPA revised its regulations implementing sections 169A and 169B of the CAA in several iterations beginning in 1999. Among other things, the 1999 Regional Haze Rule codified the gap-filling approach EPA used in the 1991 NGS rulemaking. 64 FR 35714, 35739 (July 1, 1999). The Regional Haze Rule requires a State or Tribe to submit an implementation plan containing either emission limitations representing BART, 40 CFR 308(e)(1), or other alternative measures that will achieve greater reasonable progress than would have resulted from BART, 40 CFR 308(e)(2). EPA anticipated at the time that "the most likely alternative measures adopted * * * will be an emissions trading program," 64 FR at 35743, but did not limit the States or Tribes to such an approach. The requirements for alternative programs designed to achieve better than BART are established at 40 CFR 51.308(e)(2).

The EPA modified the regulations addressing alternatives to source-specific BART requirements in 2005 and again in 2006. In 2005, EPA established specific criteria for determining whether a trading program or other alternative measures provides for greater reasonable progress. 70 FR 39104 (July 6, 2005). To assess whether an alternative meets this core requirement, States and Tribes must first consider the distribution of emissions that would result from BART as compared to the alternative. The regulations provide that

[2] Annual emissions are based on APS' current emissions reported to EPA. Cumulative emissions are based on APS's proposal from 2014 to 2037 prior to end of new lease (24 year period).

[i]f the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emissions reductions, then the alternative measures may be deemed to achieve greater reasonable progress.

40 CFR 51.308(e)(3). Where the alternative would result in a different distribution of emissions, the regulations require dispersion modeling to determine differences in visibility between BART and the trading program and establish a test against which to measure the results of the modeling. *Id.*

In 2006, EPA again revised the Regional Haze Rule, focusing on regulatory issues associated with the use of an emissions trading program as an alternative to BART. In this rulemaking, EPA allowed for a less prescriptive approach to determining whether an alternative program provides for greater reasonable progress based on the clear weight of evidence. 40 CFR 51.308(e)(2)(i)(E).71 FR 60612 (Oct. 13, 2006).

To meet the requirement of the Regional Haze Rule that all necessary emission reductions take place during the period of the first long-term strategy for regional haze, if APS elects to implement this alternative emission control strategy, EPA is proposing to require Units 4 and 5 to comply with the 0.098 lb/MMBtu NO_X emission limit by July 31, 2018, five months earlier than APS' proposed schedule for complete SCR installation and operation.

In today's supplemental proposed rule, EPA is proposing to find, based on the weight of evidence, that a final rule requiring APS to shut down Units 1–3 by 2014 and install and operate SCR on Units 4 and 5 by July 31, 2018 will result in greater reasonable progress towards the national visibility goal under section 169A(b)(2) than EPA's October 19, 2010 BART proposal. Therefore, EPA is proposing to add regulatory language to the proposed BART rule for FCPP that allows APS the option to implement its alternative emissions control strategy in lieu of EPA's BART determination.

III. EPA's Technical Analysis of Better Reasonable Progress Towards National Visibility Goal

Units 1–3 comprise approximately 27% of the electricity-generating capacity at FCPP; however, Units 1–3 contribute disproportionately to facility-wide emissions of NO_X (36%), PM (43%), and Hg (61%). The alternative emissions control strategy of shutting down Units 1–3 will consequently result in substantial emissions reductions at FCPP of all pollutants emitted by those units, particularly NO_X, PM, and Hg. See Table 2.

As discussed below, this supplemental proposed rule proposes to require Units 4 and 5, by July 31, 2018, to meet a lower NO_X emission limit than APS' proposal, five months earlier than proposed by APS. In this supplemental proposed rule, EPA is proposing to approve this EPA revision of APS' proposal as an alternative to BART because it demonstrates better reasonable progress towards the national visibility goal. Our evaluation shows that the alternative emissions control strategy will provide greater visibility improvement at all 16 Class I areas than EPA's BART proposal. *See* 40 CFR 51.308(e). We discuss our proposed NO_X emissions limit for Units 4 and 5 first because our subsequent analysis of the emissions reductions and visibility improvements rely in part on that limit. We will also briefly evaluate associated non-visibility environmental benefits from the alternative emission control strategy. Finally, we propose to retain and revise our October 19, 2010 BART proposal, with a revision described below regarding phase-in of new controls, as a contingent rule if APS does not implement its alternative emissions control strategy.

By letter dated January 25, 2011, the National Parks Conservation Association, Black Mesa Water Coalition, Dine Care, Center for Biological Diversity, Heal Utah, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sevier Citizens for Clean Air & Water, Sierra Club and WildEarth Guardians submitted comments on EPA's BART proposal and the proposal APS outlined in its November 24, 2010 letter to EPA. The letter from the consortium of environmental groups requested EPA to require lower emission limits for several pollutants emitted by FCPP. EPA considers the January 25, 2011 letter a comment, which we have posted to our docket and will provide a response to in our final rulemaking.

A. Estimated NO_X Emissions Reductions

1. Proposed NO_X Emission Limit To Apply on Units 4 and 5 With Installation of SCR by July 31, 2018

EPA's October 19, 2010 BART proposal provided for a facility-wide heat input-weighted emission limit for FCPP's Units 1-5 of 0.11 lb/MMBtu on a 30-day rolling average basis.[3] EPA determined that FCPP could achieve this limit by reducing NO_X emissions from each of its five units by 80%. The limit we proposed in our October 19, 2010 BART proposal did not include or rely on combustion controls, *i.e.,* new Low-NO_X burners (LNB). As described in more detail in our October 19, 2010 proposal (75 FR 64221), and the technical support document for the proposal, the original cell boiler design of Units 4 and 5 is difficult to retrofit with modern LNB technology, and even if combustion controls might result in some improvement in NO_X performance, the potential operational problems were not worth the small incremental reduction in NO_X emissions. EPA proposed to provide a plant-wide limit to allow flexibility to FCPP to accommodate anticipated SCR retrofit challenges associated with the small fireboxes for Units 1–3.

EPA has evaluated the NO_X emission limit we consider achievable under APS' alternative emissions control strategy. In APS' calculations for its November 24, 2010 proposal, APS assumed that under its proposed strategy, Units 4 and 5 would meet a limit of 0.11 lb/MMBtu with installation and operation of SCR, not an 80% reduction from the Unit 4 and 5 baseline of 0.49 lb/MMBtu. If we apply an 80% emissions reduction solely to Units 4 and 5, APS should be able to achieve a NO_X limit of 0.098 lb/MMBtu for each unit. Our calculations are based on average baseline emissions from Units 4 and 5 of 0.49 lb/MMBtu each, reduced by a conservative estimate of 80% control of baseline emissions.

In calculating the NO_X emission limit of 0.098 lb/MMBtu, EPA is taking into account the degradation of the SCR catalyst over its lifetime resulting in the need for periodic replacement to maintain its activity and performance. Historically, FCPP units are scheduled for outages only once every three years. Based on this, EPA anticipates that APS will change out its catalyst on the historic outage schedule and the new catalyst will be installed every three years. EPA has calculated the 30-day emission limit (0.098 lb/MMbtu) to reflect the capability of the catalyst to reduce NO_X at the end of this three year period.

EPA has also determined that pursuing higher levels of NO_X reduction efficiency (*i.e.,* greater than 80%) from SCR on Units 4 and 5 is limited by the formation of sulfuric acid (H_2SO_4) from the SCR catalyst.[4] Although more layers

[3] The BART guidelines at 40 CFR part 51 appendix Y, require averaging times for EGUs be based on a 30-day rolling average.

[4] The SCR catalyst can oxidize sulfur dioxide (SO_2) to sulfur trioxide (SO_3, which, in the presence of water vapor, forms sulfuric acid) (H_2SO_4) aerosol, which causes visibility impairment.

of catalyst could be used in the SCR unit to further enhance NO_X removal, the presence of additional catalyst would result in higher emissions of sulfuric acid, which is also a visibility-impairing pollutant. Minimizing the formation of primary SO_3/H_2SO_4 in the catalyst bed is most important for visibility improvement at Mesa Verde National Park, the closest Class I area to FCPP. Primary SO_3/H_2SO_4 formed on the SCR catalyst would be capable of impairing visibility immediately after release into the atmosphere, whereas SO_2 emissions need time and distance to convert to sulfuric acid or particulate ammonium sulfate before these emissions impact visibility.

Finally, the achievable NO_X emission limit for FCPP is affected by the high ash content in the coal burned by FCPP. The ash content is approximately 25%, which may adversely affect the capability of SCR to reach the highest end of the control efficiency range achieved at other power plants without the use of additional layers of catalyst or more frequent catalyst replacement.

For these reasons, EPA is proposing to require a NO_X emission limit in this supplemental proposed rule of 0.098 lb/MMBtu. We are proposing to approve the alternative emission control strategy requiring Units 1–3 to shut down by January 1, 2014 and Units 4 and 5 to meet an 80% NO_X reduction, with a limit of 0.098 lb/MMBtu, by July 31, 2018. This emission limit can be met by installation of SCR.

EPA is requesting comment on whether to provide FCPP with additional flexibility for meeting the 0.098 lb/MMBtu (30-day rolling average) limit by setting the limit as a heat-input weighted limit for Units 4 and 5,[5] similar to our BART proposal on October 19, 2010 which set a plant-wide heat-input-weighted limit for Units 1–5. EPA is also requesting comment on whether our final rule should also set a lower NO_X emission limit that would be averaged over a longer averaging time to reflect the capability of the SCR when the catalyst is fresher at the beginning of the three-year outage schedule. Therefore, EPA is requesting comment on whether an additional, more stringent (i.e., lower than 0.098 lb/MMBtu) heat-input-weighted emission limit, representing greater than 80% control, and averaged over one or three years would be appropriate to assure the optimized operating efficiency for an SCR-controlled unit where EPA anticipates a three-year replacement of the catalyst.[6] A heat-input-weighted limit averaged over one year could reflect the capability over the third year of the catalyst in use in either unit. A three-year average on an individual unit would reflect the capability of the catalyst to reduce NO_X over its entire duration of use. EPA anticipates that the most stringent numerical limit would be for a single-unit limit on a 3-year rolling average. Under either of these approaches, the emission limit would be set such that the facility would be required to inject sufficient ammonia to maximize the reduction of the NO_X no matter what the age of the catalyst.[7]

2. Alternative Emissions Control Strategy Will Result in Greater Visibility Improvement Than BART

As noted above, EPA's BART proposal was for a facility-wide heat input-weighted NO_X emission limit on Units 1–5 of 0.11 lb/MMBtu on a 30-day rolling average basis.[8] If EPA were to finalize its BART proposal, the facility-wide NO_X emission limit would apply 5 years after the effective date of the final rule. To evaluate the alternative emissions control strategy, EPA is assuming that the earliest possible effective date for a final BART rule for FCPP would be January 1, 2012. This means that FCPP would be required to meet the facility-wide 0.11 lb/MMBtu NO_X emission limit beginning in 2017. APS calculated this to mean that in 2017 the total that could be emitted from Units 1–5 under EPA's BART proposal would be 9,184 tpy NO_X (See item number 0080.1 in the docket for this rulemaking: "Emissions calculations from APS for its Alternative Proposal 11–29–10.xlsx").

APS is proposing to reduce NO_X (and other pollutants) by shutting down Units 1–3 by January 1, 2014, three years earlier than would be achieved by EPA's BART proposal. Because of these shutdowns, APS projected that NO_X emissions from FCPP, under its proposed alternative, during 2014–2016 would be lower than would be emitted in those years under EPA's October 19, 2010 proposal. However, under the alternative emission control strategy, emissions in 2017 and 2018 would be higher than in EPA's October 19, 2010 proposal, because APS would not achieve its final NO_X reductions until the beginning of 2019. Under APS' proposal, beginning in 2019, Units 4 and 5 would meet an emission limit of 0.11 lb/MMBtu, resulting in total emissions of 6,498 tpy NO_X. Therefore, APS' proposal would produce approximately 30% less NO_X emissions per year than EPA's BART proposal beginning in 2019.

In contrast to APS' proposal to meet a limit of 0.11 lb/MMBtu by the end of 2018, EPA is proposing as the alternative emission control strategy to require a lower NO_X emission limit of 0.098 lb/MMBtu beginning July 31, 2018. EPA is proposing a compliance date five months earlier than APS' proposal in order to meet the requirement of the Regional Haze Rule that all necessary emission reductions for an alternative measure take place during the period of the first long-term strategy for regional haze.[9] 40 CFR 51.308(e)(2)(iii). Under this alternative control strategy, total annual emissions of NO_X from FCPP at 0.098 lb/MMBtu would be 5,798 tpy. EPA's emissions calculations are included in the docket for this proposed rulemaking (see "EPA comparison of BART and alternative 2–3–11.xlsx"). If EPA finalizes a rule requiring APS to implement EPA's alternative emissions control strategy with a NO_X emission limit of 0.098 lb/MMBtu, FCPP would produce approximately 37% less NO_X emissions per year than under EPA's BART proposal.

The alternative emissions control strategy would realize the 37% greater NO_X emissions reductions two years later than would potentially result from EPA's BART proposal, but within the period of the first long-term strategy for regional haze. Our evaluation, supported by the modeled visibility improvements discussed in Section C, is that significantly lower NO_X emissions from FCPP occurring within the period of the first long term strategy and continuing on into the future, but occurring two years later than could potentially occur through EPA BART proposal, will achieve better reasonable

[5] The heat-input-weighted limit would be based on the heat input generated by each individual unit, rather than the rated capacity, which is identical for Units 4 and 5.

[6] This more strigent numerical NO_X limit with the longer averaging time could reflect the capability of the catelyst over a more extended period than a short term limit that accommodates deterioration of catalyst activity just before new catalyst is installed.

[7] Although ammonia also contributes to visibility impairment, as discussed in the Technical Support Document for our October 29, 2010 proposal, ammonia slip from the SCR is expected to react with SO_3/H_2SO_4 in the flue gas to form particulate ammonium sulfate or bisulfate, which would be captured by the downstream air preheaters, scrubbers, and baghouses.

[8] For PM, EPA proposed an emission limit of 0.012 lb/MMBtu to Units 1–3 and 0.015 lb/MMbtu on Units 4 and 5. The limit on Units 1–3 would be achievable by installing and operating new particulate controls on those units, such as new electrostatic precipitators or baghouses, and by proper operation of the existing baghouses on Units 4 and 5.

[9] The Regional Haze Rule requires revisions to regional haze implementation plans be submitted to EPA by July 31, 2018 and every ten years thereafter. This date marks the end of the first long term strategy period.

progress towards the Clean Air Act's national visibility goal.

The amount by which NO_X will be reduced between 2014 and 2019 is somewhat less certain because of differing assumptions used in APS' and EPA's evaluations. APS compared NO_X emissions for each year from 2014 until 2019 under its proposal against EPA's October 19, 2010 BART proposal as reproduced in Table 3.

TABLE 3—APS' COMPARISON OF NO_X EMISSIONS (TONS) BASED ON EPA BART PROPOSAL AND APS ALTERNATIVE PROPOSAL, REPRODUCED FROM NOVEMBER 24, 2010 SUBMITTAL FROM APS

	EPA proposal	APS proposal
2014	45,132	28,948
2015	45,132	28,948
2016	45,132	28,948
2017	9,184	28,948
2018	9,184	28,948
2019	9,184	6,498

The values APS used in Table 3, however, assume that EPA's BART determination would not have required installation of any NO_X emissions controls until 2017 and that SCR would become fully operational on all 5 units simultaneously in 2017. Therefore, APS interpreted EPA's BART proposal to allow NO_X emissions of 45,132 tpy to continue until the beginning of 2017.

EPA's BART proposal on October 19, 2010, however, included interim emission limits for the 5 units that would (if finalized) have applied following a phased-in schedule for SCR installation. Historically FCPP has operated on a 3-year outage cycle for its boilers.[10] Therefore, EPA's BART proposal assumed that Units 1–3 would be retrofit simultaneously in one outage, Unit 4 would be retrofit in a second annual outage, and Unit 5 would be retrofit in the third annual outage.

Table 4 compares our calculations of the short-term (2014–2019) NO_X emissions and Table 5 compares our calculations for short-term (2014–2019) PM emissions, between EPA's BART proposal, assuming EPA could finalize the interim emissions limits to be effective January 1, 2012,[11] and the alternative emissions control strategy with a final compliance date for installation and operation of SCR on Units 4 and 5 of July 31, 2018.[12] (See "EPA Comparison of BART and Alternative 2–3–11.xlsx" in the docket for this rulemaking).

TABLE 4—EPA'S COMPARISON OF NO_X EMISSIONS (TONS) BASED ON EPA BART PROPOSAL AND THE ALTERNATIVE EMISSION CONTROL STRATEGY

	EPA BART proposal	Alternative emission control strategy	Proposal with lower emissions
2012	45,132	45,132	Same.
2013	45,132	45,132	Same.
2014	45,132	28,947	Alternative.
2015	33,908	28,947	Alternative.
2016	22,074	28,947	EPA BART.
2017	9,026	28,947	EPA BART.
2018	9,026	19,302	EPA BART.
2019 and beyond	9,026	5,798	Alternative.

TABLE 5—EPA'S COMPARISON OF PM EMISSIONS (TONS) BASED ON EPA BART PROPOSAL AND THE ALTERNATIVE EMISSION CONTROL STRATEGY

	EPA BART proposal	Alternative emission control strategy	Proposal with lower emissions
2012	1,564	1,564	Same.
2013	1,564	1,564	Same.
2014	1,564	886	Alternative.
2015	1,564	886	Alternative.
2016	1,179	886	Alternative.
2017	1,179	886	Alternative.
2018	1,179	886	Alternative.
2019 and beyond	1,179	886	Alternative.

[10] FCPP is a baseload power plant that operates its boilers year-round at full capacity except during outages. Power plants typically schedule periodic major and minor outages to allow for routine maintenance of its boiler units. To accomodate its five boiler units, EPA understands that the boilers at FCPP are on a three-year major outage cycle, with Units 4, 5, and 1–3 alternating major outages every 3 years.

[11] The interim limits that EPA included in the proposed BART rule included a larger margin of compliance with the interim limits to provide APS the flexibility to develop strategies for meeting the plant-wide limit of 0.11 lb/MMBtu by 2017 in ways other than achieving 80% reduction equally on all units.

[12] The annual emissions in both Tables 2 and 4 are likely overestimated because they do not account for zero emissions from an individual unit (or set of units) when it is not operating during its scheduled outage.

Therefore, if finalized as proposed and effective on January 1, 2012, we estimate that EPA's BART proposal would result in lower NO_X emissions from 2016–2018, an additional year (2016) compared to APS' calculations that do not account for interim limits. In 2014 and 2015, and beginning in 2019 into the future, the alternative emissions control strategy would result in lower NO_X emissions than EPA's BART proposal. For PM, starting in 2014, the alternative emission control strategy would always result in lower emissions of PM compared to EPA's BART proposal because of the closure of Units 1–3 in 2014.

In today's supplemental proposed rule, EPA acknowledges that the interim emission limits proposed on October 19, 2010, were based on APS' historic outage schedule and were required to ensure that the installation of new controls occurred as expeditiously as practicable. APS may have challenged those proposed interim emission limits and requested EPA to finalize a BART rule that allowed installation of SCR on all units simultaneously 5 years after the effective date of the final rule (*i.e.,* in 2017). Thus, if EPA's re-evaluation of the interim limits resulted in a determination that the interim limits were not practicable, the interim emission reductions we estimated over 2015–2016, might not have been realized if the final rule was issued without interim limits. In our October 19, 2010 proposal, EPA also failed to include proposed regulatory language regarding the phased-in SCR installation, a gap which we address in Section D of this supplemental proposed rule.

B. Benefits in Addition to NO_X Emissions Reductions

On November 29, 2010, APS provided to EPA the spreadsheet on which its emission estimates were based. This spreadsheet is included in the docket for the proposed rulemaking (See the spreadsheet posted to the docket for this rulemaking: EPA–R09–OAR–2010–0683.0080.1, "Emissions calculations from APS for its Alternative Proposal 11–29–10.xlsx"). Baseline emissions reported by APS (labeled "status quo" in the spreadsheet) of NO_X, SO_2, PM, Hg, and CO_2, are included in Table 6. Emissions of NO_X, SO_2, and PM are reported in tons per year (tpy); Hg emissions are reported in pounds per year (lb/yr); and CO_2 emissions are reported in million tons per year.

TABLE 6—BASELINE EMISSIONS OF NO_X (TPY), PM (TPY), SO_2 (TPY), HG (LB/YEAR), AND CO_2 (MILLION TPY) REPORTED BY APS

	NO_X	PM	SO_2	Hg	CO_2
Unit 1	5,790	186	748	113	1.6
Unit 2	4,751	215	731	109	1.5
Unit 3	5,643	277	1,373	139	2.1
Unit 4	14,474	443	4,298	117	6.0
Unit 5	14,474	443	4,611	116	6.0

The alternative emission control strategy to shut down Units 1–3 by 2014 not only results in 100% control of NO_X, but also 100% control of all other pollutants emitted by those units, including SO_2, PM, Hg and other hazardous air pollutants, and CO_2, whereas EPA's proposal to install SCR on Units 1–5 and new PM controls on Units 1–3 would only result in 80% and 57% [13] control of NO_X and PM, respectively.

C. Modeling and Demonstrating Reasonable Progress

The Regional Haze Rule requires that implementation plans that rely on an alternative measure to BART demonstrate that the alternative achieves greater reasonable progress than would be achieved through the installation and operation of BART. 40 CFR 51.308(e)(2). The rule further states that "[i]f the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emissions reductions, than the alternative measures may be deemed to achieve greater reasonable progress". 40 CFR 51.308(e)(3). Because the emissions reductions under EPA's October 19, 2010 BART proposal and the alternative emission control strategy proposed in this supplemental proposed rule occur from the same facility, the distribution of emissions under BART and the alternative are not substantially different. Therefore, because the alternative emission control strategy results in greater emissions reductions that our BART proposal, EPA may deem the alternative emission control strategy to achieve greater reasonable progress.

Although an explicit modeling demonstration is not required based on the provisions of 40 CFR 31.08(e)(3), APS provided a modeling analysis demonstrating that its proposed alternative would result in greater visibility improvement than EPA's October 2010 BART proposal. EPA evaluated the modeling submitted by APS and modeled our alternative emission control strategy in comparison to our October 2010 proposal. EPA compared our BART proposal to the alternative emissions control strategy based on emissions after full SCR installation is complete. For EPA's BART proposal, SCR would have been completed on all units in 2017 if the final BART rule becomes effective in 2012. For the alternative emissions control strategy, EPA is proposing emissions reductions from full SCR installation and operation on Units 4 and 5 be completed by July 31, 2018.

APS provided EPA with the modeling files generated by AECOM.[14] EPA has evaluated those modeling files for this supplemental proposed rule. APS' modeling differs in some minor ways from the modeling used to support EPA's October 19, 2010 BART proposal.

In the Technical Support Document (TSD) for our October 19, 2010 BART proposal, EPA provided the emission rates of various pollutants from each of the five units used in the CALPUFF modeling analysis. These modeling inputs for the SCR control case, in pounds per hour (lb/hr) are included in Table 7 and represent the 24-hour average actual emission rate from the highest emitting day of the meteorological period modeled (2001–2003), consistent with the guidelines

[13] The percent reduction in PM emissions was calculated for Units 1–3 and assumed that imposing an emission limit on Units 4 and 5 would not change the measured emission rates from those units because Units 4 and 5 would continue to be controlled by the existing baghouses. Thus, the PM emission reduction is calculated as a MW-weighted average reduction from Units 1–3, using baseline emissions that range from 0.025 lb/MMBtu (Unit 1) to 0.029 lb/MMBtu (Units 2 and 3), and the proposed post-control BART limit of 0.012 lb/MMBtu on Units 1–3.

[14] Modeling files from APS and EPA modeling analyses are available from EPA upon request. Please see the **FOR FURTHER INFORMATION CONTACT** section of this supplemental proposed rule.

provided in 40 CFR Part 51, Appendix Y (BART Guidelines). The CALPUFF inputs require values for SO_2, sulfate (SO_4), NO_X, secondary organic aerosol (SOA), fine PM, coarse PM, and elemental carbon (EC).

The modeling inputs used by APS in its analysis of its proposal are included in Table 8. APS' emission inputs for NO_X and PM rely on EPA's proposed 30-day rolling average emission limits (as shown in Table 40 of our Technical Support Document). These inputs represent 80% control of baseline NO_X emissions: limit for Unit 1 = 0.16 lb/MMBtu, Unit 2 = 0.13 lb/MMBtu, Unit 3 = 0.12 lb/MMBtu, and Units 4 and 5 = 0.10 lb/MMBtu each; and PM emission rates of 0.012 lb/MMBtu from Units 1–3 and 0.015 lb/MMBtu from Units 4 and 5. APS used the peak 24-hour average emissions when modeling the Baseline Impact, but used the lower 30-day rolling average emission limits shown in Table 8 to model visibility benefits from controls rather than the highest emitting day average shown in Table 7. Thus, the baseline and SCR control scenarios from APS' modeling are not directly comparable because of the different averaging times of the inputs (24-hour versus 30-day average).

TABLE 7—EPA'S CALPUFF MODELING INPUTS USED FOR OUR OCTOBER 19, 2010 BART PROPOSAL WITH SCR ON UNITS 1–5 AND PM CONTROLS ON UNITS 1–3 [15]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
SO_2	522.54	615.12	1042.09	2026.10	2131.85
SO_4	8.57	8.58	11.06	2.24	2.25
NO_X	404.03	319.89	394.16	1003.20	901.71
SOA	9.40	9.41	12.13	32.00	32.20
PM fine	17.26	20.39	23.60	100.93	48.02
PM coarse	13.19	15.58	18.03	77.12	36.69
EC	0.66	0.78	0.91	3.88	1.85

TABLE 8—APS' CALPUFF MODELING INPUTS REPRESENTING EPA'S BART PROPOSAL (UNITS 1–5), COMBINING NO_X AND PM CONTROLS, PROVIDED BY APS TO SUPPORT ITS ALTERNATIVE PROPOSAL (UNITS 4 AND 5 ONLY)

	Units 1 and 2	Unit 3	Units 4 and 5
SO_2	1137.66	1042.09	4157.95
SO_4	17.15	11.06	4.49
NO_X	681.62	363.84	1605.10
SOA	18.81	12.13	64.20
PM fine	27.71	17.87	122.89
PM coarse	11.29	7.28	93.90
EC	1.06	0.69	4.72

With respect to other modeling assumptions, APS used the same assumptions that supported EPA's October 19, 2010 BART proposal. APS directly used EPA's modeling inputs for the 1 ppb (IWAQM default) background ammonia scenario from our proposed BART determination and modeled additional scenarios: EPA's BART proposal using emission inputs for Units 1–5 in Table 7, and APS's proposed alternative using emission inputs from Table 7 for only Units 4 and 5 (with no modeling of Units 1–3 to account for shut down of those units).

EPA reviewed APS' emission inputs and modeling files and determined that when APS modeled EPA's October 19, 2010 BART proposal, APS relied on lower NO_X and PM emissions than EPA used in our proposal. NO_X emissions modeled by AECOM were 6–16% lower than EPA's modeling values from our proposal, and PM emissions as modeled by AECOM were 18–60% lower than our proposal. APS estimated that EPA's BART proposal (using the inputs from Table 7) would reduce the impact of FCPP on the 16 Class I areas by an average of 59%. APS modeling showed that its alternative emissions control strategy would reduce the impact of FCPP on the 16 Class I areas by an average of 74% (See Table 8).

TABLE 8—MODELING RESULTS—98TH PERCENTILE DELTA DV IMPROVEMENT AND PERCENT CHANGE IN DELTA DECIVIEW (DV) [16] IMPACT FROM EPA'S BART PROPOSAL AND APS' ALTERNATIVE PROPOSAL COMPARED TO BASELINE IMPACTS FROM 2001–2003 USING 1 PPB AMMONIA BACKGROUND SCENARIO AS MODELED BY AECOM

Class I area	Distance to FCPP	Baseline impact	Improvement from EPA's proposal		Improvement from APS' proposal	
	Kilometers (km)	Delta dv	Delta dv	%	Delta dv	%
Arches National Park	245	4.11	2.5	58	3.08	75
Bandelier Wilderness Area	216	2.90	1.71	58	2.12	74
Black Canyon of the Gunnison WA	217	2.36	1.47	62	1.84	76
Canyonlands NP	214	5.24	2.97	54	3.86	72
Capitol Reef NP	283	3.23	1.94	54	2.46	72

[15] In our October 2010 BART proposal, we conducted our modeling analyses for NO_X and PM controls separately. In Table 6, the emission inputs for NO_X and SO_4, from the SCR control case, are combined with inputs for SOA, PM fine, PM coarse, and EC, from the PM control case, for better comparison with APS's representation of EPA's BART proposal. Emission inputs for SO_2 were identical for the SCR and PM control scenarios.

TABLE 8—MODELING RESULTS—98TH PERCENTILE DELTA DV IMPROVEMENT AND PERCENT CHANGE IN DELTA DECIVIEW (DV) [16] IMPACT FROM EPA'S BART PROPOSAL AND APS' ALTERNATIVE PROPOSAL COMPARED TO BASELINE IMPACTS FROM 2001–2003 USING 1 PPB AMMONIA BACKGROUND SCENARIO AS MODELED BY AECOM—Continued

Class I area	Distance to FCPP	Baseline impact	Improvement from EPA's proposal		Improvement from APS' proposal	
	Kilometers (km)	Delta dv	Delta dv	%	Delta dv	%
Grand Canyon NP	345	1.63	0.91	58	1.14	75
Great Sand Dunes NM	279	1.16	0.69	63	0.84	76
La Garita WA	202	1.72	1.08	63	1.3	77
Maroon Bells Snowmass WA	294	1.04	0.65	64	0.79	78
Mesa Verde NP	62	5.95	2.67	48	3.57	66
Pecos WA	258	2.16	1.19	59	1.55	74
Petrified Forest NP	224	1.40	0.69	58	0.93	74
San Pedro Parks WA	160	3.88	2.15	55	2.77	72
West Elk WA	137	1.87	1.24	64	1.45	77
Weminuche WA	245	2.76	1.76	61	2.08	75
Wheeler Peak WA	265	1.53	0.88	60	1.12	75
Total Delta dv or Average % Change in Delta dv	.....	42.93	24.5	59%	30.9	74%

EPA re-modeled the visibility impact of combined SCR and PM controls as outlined in our October 2010 BART proposal (but were modeled separately in our proposal) and the visibility impact of the alternative emissions control strategy. EPA's emission inputs continued to rely on the peak 24-hour average value over the meteorological period for NO_X, rather than the 30-day rolling average emission limits used by APS. For PM, emission inputs are based on our proposed BART emission limits. Our emission inputs are shown in Table 9 and the results of our modeling is shown in Table 10.

Table 9 differs from EPA's values in Table 7 because the combination of PM and NO_X controls into a single modeling scenario results in lower sulfate emissions because new PM controls on Units 1–3 would provide additional control of the sulfuric acid produced by the SCR system. In estimating the reduction of sulfuric acid by the new PM controls, EPA chose to use the capture efficiency of a wet ESP (28%) in lieu of a baghouse (90%) [17] because a wet ESP is expected to result in a lower capture rate for sulfuric acid than a baghouse, thus providing a more conservative estimate of the visibility benefits of combined PM and NO_X controls from EPA's BART proposal.

TABLE 9—EPA'S CALPUFF MODELING INPUTS (LB/HR) [18] REPRESENTING OUR BART PROPOSAL (NO_X AND PM CONTROLS COMBINED UNITS 1–5) AND APS' ALTERNATIVE PROPOSAL (UNITS 4 AND 5 ONLY WITH NO_X CONTROLS)

	Units 1 and 2	Unit 3	Units 4 and 5
SO_2	1137.66	1042.09	4157.95
SO_4	12.51	8.07	4.49
NO_X	723.92	394.16	1904.91
SOA	18.81	12.13	64.20
PM fine	27.70	17.87	122.89
PM coarse	11.29	7.28	93.90
EC	1.06	0.69	4.72

EPA'smodeling analysis shows that our BART proposal, which combines new NO_X controls to achieve 80% reduction on Units 1–5 and new PM controls on Units 1–3, would reduce FCPP's visibility impact on the 16 Class I areas by an average of 57%.[19] The alternative emissions control strategy, to shut down Units 1–3 and install SCR on Units 4 and 5, would reduce FCPP's visibility impact on the 16 Class I areas by an average of 72%. Our modeling analysis of the alternative emissions control strategy shows about 2% lower visibility improvement compared to APS' analysis because we used slightly different emission inputs than APS.[20]

[16] The Baseline Delta dv values represent the visibility impact of FCPP on the given Class I area. Higher Delta dv Improvement values represent a smaller anticipated visibility impact of FCPP on the Class I area after controls are applied, and thus greater percent improvement.

[17] We proposed as BART a PM emission limit of 0.012 lb/MMBtu that could be met by either a wet ESP or a baghouse. We did not specify which control technology must be used to meet the proposed BART limit.

[18] The emission input calculations for this Supplemental Notice are provided in the docket as a spreadsheet titled "FCPP_Supplemental Emission_Inputs 01–04–11.xlsx".

[19] In our October 2010 proposal, our separate modeling analyses of the NO_X and PM controls showed that individually, SCR on Units 1–5 would reduce the visibility impact of FCPP by an average of 57% and PM controls on Units 1–3 by less than 1%.

[20] EPA's inputs for NO_X are consistent with the BART guidelines for modeling anticipated visibility improvement. Additionally, in modeling the combined effects of SCR and PM controls on Units 1–3 for the EPA BART scenario, EPA included a factor of 0.72 in the sulfuric acid calculation (as SO_4) to account for the additional 28% sulfuric acid control provided by the wet ESP as reported in EPRI 2010. AECOM did not include additional control of sulfuric acid from the new wet ESP on Units 1–3.

TABLE 10—MODELING RESULTS—98TH PERCENTILE DELTA DV IMPROVEMENT AND PERCENT CHANGE IN DELTA DECIVIEW (DV)[21] IMPACT FROM EPA'S BART PROPOSAL AND ALTERNATIVE EMISSION CONTROL STRATEGY COMPARED TO BASELINE IMPACTS FROM 2001–2003 USING 1 PPB AMMONIA BACKGROUND SCENARIO AS MODELED BY EPA

Class I area	Distance to FCPP	Baseline impact	Improvement from EPA's proposal		Improvement from alternative emission control strategy	
	Kilometers (km)	Delta dv	Delta dv	%	Delta dv	%
Arches National Park	245	4.11	2.41	55	2.99	72
Bandelier Wilderness Area	216	2.90	1.65	56	2.06	72
Black Canyon of the Gunnison WA	217	2.36	1.43	60	1.8	75
Canyonlands NP	214	5.24	2.85	52	3.76	70
Capitol Reef NP	283	3.23	1.88	52	2.4	70
Grand Canyon NP	345	1.63	0.88	56	1.12	73
Great Sand Dunes NM	279	1.16	0.68	61	0.83	74
La Garita WA	202	1.72	1.06	61	1.28	75
Maroon Bells Snowmass WA	294	1.04	0.65	63	0.78	77
Mesa Verde NP	62	5.95	2.49	46	3.42	64
Pecos WA	258	2.16	1.18	57	1.52	72
Petrified Forest NP	224	1.40	0.66	56	0.92	72
San Pedro Parks WA	160	3.88	2.04	53	2.75	70
Weminuche WA	137	1.87	1.2	62	1.42	76
West Elk WA	245	2.76	1.74	59	2.04	73
Wheeler Peak WA	265	1.53	0.85	58	1.1	73
Total Delta dv or Average % Change in Delta dv	.....	42.94	23.65	57%	30.19	72%

D. Alternative Emission Control Strategy Has Lower Cost Than EPA's Proposed BART Determination

APS did not provide any information to EPA on the cost of its proposed alternative. In our October 19, 2010 BART proposal and TSD, we presented cost and cost effectiveness information for SCR on Units 1–5. The cost effectiveness of SCR ranged from $2,515–$2,678 per ton of NO_X reduced. The total capital investment and total annual cost of SCR on Units 1–3 represented approximately 39% of total facility-wide cost. Therefore, this alternative emissions control strategy, which calls for closing Units 1–3 and installing SCR on Units 4 and 5, should be approximately 39% less costly than EPA's proposed BART determination requiring SCR retrofits on all five units.

IV. EPA's Supplemental Proposal

In this proposal, EPA is proposing that the closure of Units 1–3 by 2014 and installation and operation of SCR on Units 4 and 5 to meet a NO_X emission limit of 0.098 lb/MMBtu each by July 31, 2018, represents reasonable progress towards the national visibility goal under CAA Section 169A(b)(2) because it would result in better visibility improvement at a lower cost than our October 19, 2010 BART proposal. EPA is proposing to require FCPP to meet a NO_X emission limit for Units 4 and 5 of 0.098 lb/MMBtu each on the 30-day rolling average by July 31, 2018.

EPA is supplementing our October 19, 2010 BART proposal with regulatory language that would allow APS to comply with this alternative emission control strategy in lieu of complying with our October 19, 2010 BART proposal. EPA is continuing to propose to require APS to meet PM and 10% opacity limits on Units 4 and 5, as well as the 20% opacity limits for controlling dust from coal and ash handling and storage facilities, included in our October 19, 2010 proposal. The October 2010 proposal required FCPP to meet the PM emission limits on Units 4 and 5 180 days after the re-start of the units following the installation of SCR on those units. EPA is requesting comment on whether the PM emission limits and opacity limits on Units 4 and 5 should become effective prior to SCR installation, for both the proposed BART determination and the alternative emission control strategy.

In this supplemental proposed rule, EPA is also including a proposed schedule for installation of add-on post-combustion NO_X controls for our October 19, 2010 proposed BART determination, which was not included in the 2010 proposal, deleting the requirement under paragraph (i) to submit a plan and schedule for compliance to the Regional Administrator within 180 days of the effective date of the rule because it is redundant and less specific than the new requirement added as subparagraph (6) of paragraph (i) that a final plan be submitted by January 1, 2013, adding a test substitution allowance for PM testing on Units 4 and 5 that was included for Unit 1–3 but inadvertently excluded for Units 4 and 5 in the October 2010 proposal, and also replacing references to "SCR" in the regulatory language with "add-on post-combustion NO_X controls".

EPA is proposing to require FCPP to install and operate add-on post-combustion NO_X controls on at least 560 MW of net generation within 3 years of the effective date of the final rule, and on at least 1310 MW of net generation within 4 years of the effective date of the final rule. EPA's proposed installation schedule requires add-on post-combustion NO_X controls be installed on a given MW capacity rather than on specific units, in order to provide FCPP with the flexibility to determine the order of retrofits. As proposed, FCPP would have the option to begin retrofits on Units 1–3, or on Unit 4 or 5.

EPA is requesting comment by May 2, 2011 on both our October 19, 2010 BART proposal and this supplemental proposed rule proposing to allow APS to implement this alternative emissions control strategy. We are additionally requesting comment on adding a NO_X emission limit requiring greater than 80% control over longer averaging times weighted for heat-input, and the

[21] The Delta dv values represent the visibility impact of FCPP on the given Class I area. Higher Delta dv Improvement values represent a smaller anticipated visibility impact of FCPP on the Class I area after controls are applied, and thus greater percent improvement.

appropriate effective date of the PM limits on Units 4 and 5.

EPA understands that APS must receive approvals from several Federal and State agencies (*e.g.,* the Federal Energy Regulatory Commission, the Arizona Corporation Commission, and the California Public Utilities Commission), and lease renewals from the Navajo Nation, which are expected to occur by the end of 2012, in order to implement this alternative emission control strategy. If this Supplemental rulemaking is finalized as proposed, APS will be required either to comply with this alternative emissions control strategy or the requirements of EPA's October 19, 2010 BART proposal as modified by this supplemental proposed rule regarding phase-in of controls. FCPP will be required to provide notification to EPA of its intended strategy for reducing NO_X by June 1, 2012 and its final decision by January 1, 2013.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) because it is supplementing a proposed rule that applies to only one facility and is not a rule of general applicability. This supplemental proposed rule, therefore, is not subject to review under EO 12866. This action proposes a source-specific FIP for the Four Corners Power Plant on the Navajo Nation.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a "collection of information" is defined 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 the proposed FIP applies to a single facility, Four Corners Power Plant, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

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; 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this supplemental proposed rule to our proposed action on small entities, I certify that this supplemental proposed rule to our proposed action will not have a significant economic impact on a substantial number of small entities. The FIP for Four Corners Power Plant being addressed today would not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985)

D. Unfunded Mandates Reform Act (UMRA)

This supplemental proposed rule, if finalized, will impose an enforceable duty on the private sector owners of FCPP. However, this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million (in 1996 dollars) or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's estimate for the total annual cost to install and operate SCR on all five units at FCPP and the cost to install and operate new PM controls on Units 1–3 does not exceed $100 million (in 1996 dollars) in any one year and the alternative emissions control strategy to shut down Units 1–3 and install SCR on Units 4 and 5 is expected to be less costly than EPA's proposed BART determination. Thus, this supplemental proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This supplemental proposed rule will not impose direct compliance costs on the Navajo Nation, and will not preempt Navajo law. This supplemental proposed rule will, if finalized, reduce the emissions of two pollutants from a single source, the Four Corners Power Plant.

E. Executive Order 13132: Federalism

Under section 6(b) of Executive Order 13132, EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs on State or local governments, 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, or EPA consults with State and local officials early in the process of developing the proposed action. In addition, under section 6(c) of Executive Order 13132, EPA may not issue an action that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed action.

EPA has concluded that this supplemental proposed rule, if finalized, may have federalism implications because it makes calls for emissions reductions of two pollutants from a specific source on the Navajo Nation. However, the supplemental proposed rule, if finalized, will not impose substantial direct compliance costs on the Tribal government, and will not preempt Tribal law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this action.

Consistent with EPA policy, EPA nonetheless consulted with representatives of Tribal governments early in the process of developing the proposed action to permit them to have

meaningful and timely input into its development.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000), requires EPA to develop "an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." Under Executive Order 13175, to the extent practicable and permitted by law, EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. In addition, to the extent practicable and permitted by law, EPA may not issue a regulation that has Tribal implications and pre-empts Tribal law unless EPA consults with Tribal officials early in the process of developing the proposed regulation and prepares a tribal summary impact statement.

EPA has concluded that this supplemental proposed rule, if finalized, may have Tribal implications because it will require emissions reductions of two pollutants by a major stationary source located and operating on the Navajo reservation. However, this supplemental proposed rule, if finalized, will neither impose substantial direct compliance costs on Tribal governments nor pre-empt Tribal law because the proposed FIP imposes obligations only on the owners or operator of the Four Corners Power Plant.

EPA has consulted with officials of the Navajo Nation in the process of developing our October 19, 2010 proposed FIP. Additionally, EPA discussed our plans for supplementing our proposal with our analysis of APS' alternative emissions control strategy with Navajo Nation Environmental Protection Agency. EPA had an in-person meeting with Tribal representatives prior to the October 19, 2010 proposal and will continue to consult with Tribal officials during the public comment period on the proposed FIP. In addition, EPA provided Navajo Nation and other Tribal governments additional time to submit formal comments on our Advanced Notice of Proposed Rulemaking. Several Tribes, including the Navajo, submitted comments which EPA considered in developing this NPR. Therefore, EPA has allowed the Navajo Nation to provide meaningful and timely input into the development of this proposed rule and will continue to consult with the Navajo Nation and other affected Tribes prior to finalizing our BART determination.

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

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This supplemental proposed rule is not subject to Executive Order 13045 because it requires emissions reductions of two pollutants from a single stationary source. Because this supplemental proposed rule only applies to a single source and is not a proposed rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children. However, to the extent that the final rule will reduce emissions of PM and NO_X, which contribute to ozone and PM formation, the rule will have a beneficial effect on children's health be reducing air pollution that causes or exacerbates childhood asthma and other respiratory issues.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (10) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurements listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60, appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current proposed rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available. EPA is requesting comment on other appropriate VCS for measuring opacity or emissions of PM and NO_X.

Particulate Matter Emissions—EPA Methods 1 Through 5

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring

NO_X Emissions—Continuous Emissions Monitors

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing,

as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this supplemental proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule requires emissions reductions of two pollutants from a single stationary source, Four Corners Power Plant.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—[AMENDED]

1. The authority citation for part 49 continues to read as follows:

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

2. Section 49.23 is amended by adding paragraphs (i) and (j) to read as follows:

§ 49.23 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

* * * * *

(i) Regional Haze Best Available Retrofit Technology limits for this plant are in addition to the requirements of paragraphs (a) through (h) of this section. All definitions and testing and monitoring methods of this section apply to the limits in paragraph (i) of this section except as indicated in paragraphs (i)(1) through (4) of this section. The interim NO_X emission limits for each unit shall be effective 180 days after re-start of the unit after installation of add-on post-combustion NO_X controls for that unit and until the plant-wide limit goes into effect. The plant-wide NO_X limit shall be effective no later than 5 years after the effective date of this paragraph. The owner or operator may elect to meet the plant-wide limit early to remove the individual unit limits. Particulate limits for Units 1, 2, and 3 shall be effective 180 days after re-start of the units after installation of the PM controls but no later than 5 years after the effective date of this paragraph (i). Particulate limits for Units 4 and 5 shall be effective 180 days after re-start of the units after installation of the add-on post-combustion NO_X controls.

(1) Particulate Matter for units 1, 2, and 3 shall be limited to 0.012 lb/MMBtu for each unit as measured by the average of three test runs with each run collecting a minimum of 60 dscf of sample gas and with aduration of at least 120 minutes. Sampling shall be performed according to 40 CFR Part 60 Appendices A–1 through A–3, Methods 1 through 4, and Method 5 or Method 5e. The averaging time for any other demonstration of the particulate matter compliance or exceedence shall be based on a six hour average. Particulate testing shall be performed annually as required by paragraph (e)(3) of this section. This test with 120 minute test runs may be substituted and used to demonstrate compliance with the particulate limits in paragraph (d)(2) of this section.

(2) Particulate Matter from units 4 and 5 shall be limited to 0.015 lb/MMbtu for each unit as measured by the average of three test runs with each run collecting a minimum of 60 dscf of sample gas and with a duration of at least 120 minutes. Sampling shall be performed according to 40 CFR Part 60 Appendices A–1 through A–3, Methods 1 through 4 and Method 5 or Method 5e. The averaging time for any other demonstration of the particulate matter compliance or exceedence shall be based on a six hour average. Particulate testing shall be performed annually as required by paragraph (e)(3) of this section. This test with 120 minute test runs may be substituted and used to demonstrate compliance with the particulate limits in paragraph (d)(2) of this section.

(3) No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, 3, 4 or 5 into the atmosphere exhibiting greater than 10% opacity, excluding uncombined water droplets, averaged over any six (6) minute period.

(4) Plant-wide nitrogen oxide emission limits.

(i) The plant-wide nitrogen oxide limit, expressed as nitrogen dioxide (NO_2), shall be 0.11 lb/MMBtu as averaged over a rolling 30 calendar day period. NO_X emissions for each calendar day shall be determined by summing the hourly emissions measured as pounds of NO_2 for all operating units. Heat input for each calendar day shall be determined by adding together all hourly heat inputs, in millions of BTU, for all operating units. Each day the 30 day rolling average shall be determined by adding together that day's and the preceding 29 days' pounds of NO_2 and dividing that total pounds of NO_2 by the sum of the heat input during the same 30 day period. The results shall be the 30 day rolling pound per million BTU emissions of NO_X.

(ii) The interim NO_X limit for each individual boiler with add-on post-combustion NO_X control shall be as follows:

(A) Unit 1 shall meet a rolling 30 calendar day NO_X limit of 0.21 lb/MMBtu,

(B) Unit 2 shall meet a rolling 30 calendar day limit of 0.17 lb/MMBtu,

(C) Unit 3 shall meet a rolling 30 calendar day limit of 0.16 lb/MMBtu,

(D) Units 4 and 5 shall meet a rolling 30 calendar day limit of 0.11 lb/MMBtu, each.

(iii) Schedule for add-on post-combustion NO_X controls installation

(A) Within 3 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_X controls on at least 560 MW (net) of generation.

(B) Within 4 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_X controls on at least 1310 MW (net) of generation.

(iv) Testing and monitoring shall use the 40 CFR part 75 monitors and meet the 40 CFR part 75 quality assurance requirements. In addition to these 40 CFR part 75 requirements, relative accuracy test audits shall be performed for both the NO_X pounds per hour measurement and the heat input measurement. These shall have relative accuracies of less than 20%. This testing shall be evaluated each time the 40 CFR part 75 monitors undergo relative accuracy testing.

(v) If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30 day plant wide rolling average.

(vi) Upon the effective date of the plant-wide NO_X average, the owner or operator shall have installed CEMS and COMS software that complies with the requirements of this section.

(5) In lieu of meeting the NO_X requirements of paragraph (i)(4) of this section, FCPP may choose to permanently shut down Units 1, 2, and 3 by January 1, 2014 and meet the requirements of this paragraph to control NO_X emissions from Units 4 and

5. By July 31, 2018, Units 4 and 5 shall be retrofitted with add-on post-combustion NO_X controls to reduce NO_X emissions. Units 4 and 5 shall each meet a 0.098 lb/MMBtu emission limit for NO_X expressed as NO_2 over a rolling 30 day average. Emissions from each unit shall be measured with the 40 CFR part 75 continuous NO_X monitor system and expressed in the units of lb/MMBtu and recorded each hour. A valid hour of NO_X data shall be determined per 40 CFR part 75. For each calendar day, every valid hour of NO_X lb/MMBtu measurement shall be averaged to determine a daily average. Each daily average shall be averaged with the preceding 29 valid daily averages to determine the 30 day rolling average. The NO_X monitoring system shall meet the data requirements of 40 CFR 60.49Da(e)(2) (at least 90% valid hours for all operating hours over any 30 successive boiler operating days). Emission testing using 40 CFR part 60 appendix A Method 7E may be used to supplement any missing data due to continuous monitor problems. The 40 CFR part 75 requirements for bias adjusting and data substitution do not apply for adjusting the data for this emission limit.

(6) By June 1, 2012, the owner or operator shall submit a letter to the Regional Administrator updating EPA of the status of lease negotiations and regulatory approvals required to comply with paragraph (i)(5) of this section. By January 1, 2013, the owner or operator shall notify the Regional Administrator by letter whether it will comply with paragraph (i)(5) of this section or whether it will comply with paragraph (i)(4) of this section and shall submit a plan and time table for compliance with either paragraph (i)(4) or (i)(5) of this section. The owner or operator shall amend and submit this amended plan to the Regional Administrator as changes occur.

(7) The owner or operator shall follow the requirements of 40 CFR part 71 for submitting an application for permit revision to update its Part 71 operating permit after it achieves compliance with paragraph (i)(4) or (i)(5) of this section.

(j) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and ash handling and storage facilities. Within ninety (90) days after promulgation of this paragraph, the owner or operator shall develop a dust control plan and submit the plan to the Regional Administrator. The owner or operator shall comply with the plan once the plan is submitted to the Regional Administrator. The owner or operator shall amend the plan as requested or needed. The plan shall include a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, ash handling, storage, and landfills, and road sweeping activities. Within 18 months of promulgation of this paragraph each owner or operator shall not emit dust with opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

[FR Doc. 2011–3998 Filed 2–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0924; FRL–9270–6]

Approval and Promulgation of Air Quality Implementation Plans, State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of State Implementation Plan (SIP) revisions for the State of Louisiana. The rule revisions, which cover the years 1996–2006, were submitted by the State of Louisiana, and include formatting changes, regulatory wording changes, substantive or content changes, and incorporation by reference (IBR) of Federal rules. These cumulative revisions affect Louisiana Administrative Code (LAC) 33:III, Chapters 1, 7, 9, 11, 13, 14, 15, 19, 21, 22, 23, 25, 30, 60, 61, and 65. The overall intended outcome is to make the approved Louisiana SIP consistent with current Federal and State requirements. We are approving the revisions in accordance with 110 of the Clean Air Act (CAA or Act) and EPA's regulations.

DATES: Written comments must be received on or before March 28, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0924 by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0924. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367, fax (214) 665–7263, e-mail address *rennie.sandra@epa.gov.*

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

Table of Contents

I. What action is EPA taking?

We are proposing to approve revisions to the Louisiana SIP, submitted by the LDEQ from 1996–2006. The revisions affect the Louisiana Administrative Code, the official compilation of Agency rules for the State of Louisiana. The revisions apply to LAC 33:III, Chapters 1, 7, 9, 11, 13, 14, 15, 19, 21, 23, 25, 30, 60, 61, and 65 as specified in Table 2. These revisions were submitted for approval during the years 1996–2006. The revisions make corrections or changes that align the SIP with State and Federal regulations.

II. Background

The Baton Rouge nonattainment area was first designated nonattainment in 1978 (43 FR 8964, 8998). In 1991, the area was designated nonattainment for the 1-hour ozone standard by operation of law under the Clean Air Act Amendments of 1990 (56 FR 56694) as a 6-parish nonattainment area (Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge Parishes). The area was classified as a serious nonattainment area with an attainment date of November 15, 1999. Pointe Coupee Parish was later reclassified to marginal and redesignated to attainment (62 FR 648, January 6, 1997) while the 5-parish area remained designated nonattainment. After the 5-parish area failed to attain the 1-hour standard in 1999, it was "bumped up" to the severe classification by operation of law with an effective date of June 23, 2003, and an attainment date of November 15, 2005 (79 FR 20077, April 24, 2003).

Under EPA's 1997 8-hour ozone standard, the Baton Rouge area was classified as marginal on April 15, 2004 with an attainment date of June 15, 2007. After the area failed to attain the 1997 8-hour standard, EPA reclassified the Baton Rouge area to moderate with an attainment date of June 15, 2010.

As of December 31, 2008, the Baton Rouge area monitored attainment of the 1-hour ozone standard and the 1997 8-hour ozone standard for the 2006–2008 monitoring period and continues to attain both standards. On February 10, 2010, EPA issued a final determination that the Baton Rouge area has attained the 1-hour ozone standard (75 FR 6570). On September 9, 2010, EPA issued a final determination that the Baton Rouge area has attained the 1997 8-hour ozone standard (75 FR 54778).

We also approved all requirements for a 1-hour serious area attainment demonstration for the 5-parish area on July 2, 1999 (64 FR 35930). We are now proposing to approve numerous general SIP rule revisions submitted since 1996.

III. What is being addressed in this document?

The State of Louisiana has submitted numerous SIP revisions for EPA approval from the years 1996 to 2006.

The revisions were submitted to EPA according to the schedule in Table 1.

TABLE 1—LOUISIANA RULE REVISIONS TO THE STATE IMPLEMENTATION PLANS (SIP)

Submitted to EPA by the Governor of Louisiana or his designee on	For the Rules adopted into the SIP during calendar year	Revisions to LAC 33:III Chapters
April 30, 1997	1996	1, 15, 21, 25, 29, 30, 31, 60, 61, 64.
July 25, 1997	1996 and earlier	1, 2, 5, 7, 9, 11, 13, 21, 23, 25, 30, 31, 60, 64, 65.
June 22, 1998	1997	2, 5, 13, 15, 21, 23, 25.
February 2, 2000	1998	5, 6, 11, 15, 21, 23, 25.
January 27, 2003	1999–2001	2, 5, 6, 11, 19, 21, 61.
June 27, 2003	2002	5.
September 14, 2004	2003	9, 21.
June 3, 2005	2004	2, 21.
May 5, 2006	2005	2, 5, 6, 9, 11, 14, 15, 21, 22, 23.
June 15, 2005	Baton Rouge Severe Area Rule Update	5, 21, 22.
November 9, 2007	2006	1, 5, 7, 9, 23.

These cumulative revisions affect LAC 33:III, Chapters 1, 2, 5, 6, 7, 9, 11, 13, 14, 15, 19, 21, 22, 23, 25, 30, 60, 61, and 65. This action addresses revisions in all but Chapters 2, 5, and 6.

The revisions being acted upon are comprised of format changes, nonsubstantive regulatory wording changes, content or substantive changes, and incorporations by reference (IBR) of Federal rules. Format changes are revisions that affect the overall structure and arrangement of the LAC. These changes, among other things, involve moving an item from one section to another, repealing and replacing whole chapters, renumbering, repositioning contents. Nonsubstantive regulatory wording changes are revisions that do not dramatically affect the content of the rule but do add clarity. These changes, among other things, may appear in the form of corrections for typographical errors, grammatical errors, minor

language changes, updating revisions, and changing reference citations that clarify the current rule. Content or substantive changes are revisions that alter the original meaning of the rule in a noticeable or significant manner. These revisions, among other things, may be in the form of an addition of a compound on an exemption list, modifications to requirements, fee increases, creation of new requirements. Incorporation by reference revisions make the State's rules consistent with Federal regulations by referring to the Federal requirements that apply to the State's rule.

The revisions being acted upon are described in detail in the Technical Support Document and listed in Table 2.

The most notable format changes were made in Chapters 60, 61, and 65. These Chapters were repealed and the contents moved to other existing chapters. Highlights of certain content or substantive changes are summarized in Section V.

Some revisions submitted by the State during the years of 1996–2006 are not being acted upon by the EPA at this time for several reasons: (1) EPA plans to review and act upon several revisions, such as Chapter 2 and Chapter 5, in a separate action, (2) Some submitted revisions did not require further action because they were either superseded by subsequent submittals, made moot by prior approvals, already approved (Chapter 6), replaced by other program rules (sections 1901–1935), or submitted just for clarifying purposes; (3) EPA is not acting on certain revisions in LAC 33:III sections 927, 1109, 1507, 1509, 2103, 2104, 2107, 2120, 2129, 2133, 2160, 2531, and a resubmittal of 2156–2160 because the State requested that we not act on certain revisions in a letter dated January 25, 2011. In the last case, we find that not acting on these revisions does not affect the approvability of the other revisions under consideration. We are also not acting on LAC 33:III sections 1901–1935 (vehicle inspection and maintenance) because the program for which these rules were written was never implemented, and we subsequently approved a substitute program in 67 FR 60594, September 26, 2002.

TABLE 2—REVISIONS PROPOSED FOR APPROVAL

State citation	Title/subject	State adoption date
LAC Title 33. Environmental Quality Part III. Air		
Chapter 1. General Provisions		
* * * * * * *		
Section 111	Definitions	10/20/95
Section 111	Definitions	12/20/96
Section 111	Definitions	9/20/06
* * * * * * *		
Chapter 7. Ambient Air Quality		
Section 701.C	Purpose	10/20/95
Section 709.A	Measurement of Concentrations—PM_{10}, $PM_{2.5}$, Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead.	9/20/06
Section 711	Tables 1, Ia, 2—Air Quality	9/20/06
* * * * * * *		
Chapter 9. General Regulation on Control of Emissions and Emission Standards		
* * * * * * *		
Section 907	General Regulations on Control of Emissions and Emission Standards	9/20/95
Section 918	Recordkeeping and Annual Reporting	10/20/05
Section 919–919.A.6	Emissions Inventory	2/20/06
Section 919.B.1	Types of Inventories	2/20/06
Section 919.B.2.–919.B.5.g.v	Types of Inventories	12/20/03
Section 919.C	Calculations	2/20/06
Section 919.D.–F	Reporting Requirements Enforcement Fees	12/20/03
* * * * * * *		
Chapter 11. Control of Emissions of Smoke		
Section 1101.A	Control of Air Pollution from Smoke. Purpose	10/20/95
Section 1105.A	Smoke from Flaring Shall Not Exceed 20 Percent Opacity	7/20/05
Section 1107.A	Exemptions	7/20/05
Section 1109.A	Control of Air Pollution from Outdoor Burning	10/20/95
Section 1109.B	Control of Air Pollution from Outdoor Burning	4/20/98
Section 1109.E.–Il09.F	Control of Air Pollution from Outdoor Burning	4/20/98

TABLE 2—REVISIONS PROPOSED FOR APPROVAL—Continued

State citation	Title/subject	State adoption date
* * * * * * *		
Chapter 13. Emission Standards for Particulate Matter (Including Standards for Some Specific Facilities)		
Subchapter A. General		
* * * * * * *		
Section 1303.A	Toxic Substances	10/20/95
Section 1311.C.–1311.D	Emission Limits	6/20/97
* * * * * * *		
Subchapter D	Refuse Incinerators	10/20/94
* * * * * * *		
Section 1319	Refuse Incinerators	10/20/94
* * * * * * *		
Chapter 14. Conformity		
* * * * * * *		
Section 1410.A.5.a.i	Criteria for Determining Conformity of General Federal Actions	10/20/05
* * * * * * *		
Chapter 15. Emission Standards for Sulfur Dioxide		
Section 1503	Emission Standards for Sulfur Dioxide. Emission Limitations	7/20/98
Section 1507	Emission Standards for Sulfur Dioxide. Exceptions	7/20/98
Section 1511.B	Continuous Emission Monitoring	12/20/96
* * * * * * *		
Chapter 19. Mobile Sources		
Section 1951–1973	Clean Fuel Fleet Rules	3/20/00
* * * * * * *		
Chapter 21. Control of Emission of Organic Compounds		
Subchapter A. General		
* * * * * * *		
Section 2103.A.–2103.B	Storage of Volatile Organic Compounds	5/20/99
Section 2103.C.–2103.D.4	Storage of Volatile Organic Compounds	6/20/96
2103.D.4.a	Storage of Volatile Organic Compounds	10/20/05
Section 2103.D.4.b.–2103.D.4.d	Storage of Volatile Organic Compounds	8/20/02
Section 2103.G.1.–2103.G.2	Storage of Volatile Organic Compounds	6/20/96
Section 2103.G.3.–2103.G.5	Storage of Volatile Organic Compounds	12/20/98
Section 2103.H.2.a.–d	Storage of Volatile Organic Compounds	12/20/96
Section 2103.H.3	Storage of Volatile Organic Compounds	2/20/98
Section 2103.I.6	Storage of Volatile Organic Compounds	12/20/98
Section 2103.I.7	Storage of Volatile Organic Compounds	8/20/02
Section 2104.A	Crude Oil and Condensate	4/20/04
Section 2104.B.–2104.C.1	Crude Oil and Condensate	11/20/97
Section 2104.C.2.–2104.C.4	Crude Oil and Condensate	4/20/04
Section 2104.D	Crude Oil and Condensate	11/20/97
Section 2104.E	Crude Oil and Condensate	4/20/04
Section 2104.F.–2104.F.2.d	Crude Oil and Condensate	11/20/97
Section 2104.G	Crude Oil and Condensate	11/20/97
Section 2107.E.1.–2	Volatile Organic Compounds—Loading	12/20/96
Section 2108.A	Marine Vapor Recovery	4/20/04
Section 2108.C.2.–2108.C.3	Marine Vapor Recovery	1/20/98
Section 2108.D.4	Marine Vapor Recovery	4/20/04
Section 2108.E.1.a.i.–ii. and E.1.b	Marine Vapor Recovery	12/20/96
Section 2108.E.2	Marine Vapor Recovery	7/20/98
Section 2108.E.3. and E.5	Marine Vapor Recovery	12/20/96

TABLE 2—REVISIONS PROPOSED FOR APPROVAL—Continued

State citation	Title/subject	State adoption date
Section 2108.F.1	Marine Vapor Recovery	10/20/05
Section 2109.C.1.–4	Oil/Water–Separation	12/20/96
Section 2113.A	Housekeeping	5/20/99
Section 2113.A.4	Housekeeping	10/20/05
Section 2115	Waste Gas Disposal. Introductory paragraph	4/20/04
Section 2115.A.–2115.G	Waste Gas Disposal	2/20/98
Section 2115.H.1.a	Waste Gas Disposal	4/20/04
Section 2115.H.2.–2115.H.3	Waste Gas Disposal	2/20/98
Section 2115.I.1.–4	Waste Gas Disposal	12/20/96
Section 2115.J	Waste Gas Disposal	4/20/04
Section 2115.K.4	Waste Gas Disposal	2/20/98
Section 2115.M	Waste Gas Disposal	2/10/98
Section 2117	Exemptions	2/20/99
Section 2121.A	Fugitive Emission Control	8/20/04
Section 2121.B.1	Fugitive Emission Control	8/20/04
Section 2121.C.1.a.ii	Fugitive Emission Control	7/20/00
Section 2121.C.3.b.–2121.C.3.c	Fugitive Emission Control	8/20/04
Section 2121.C.4.h.i	Fugitive Emission Control	1/20/98
Section 2121.D.1	Fugitive Emission Control	12/20/95
Section 2121.F	Fugitive Emission Control	10/20/05
Section 2121.G	Fugitive Emission Control	8/20/04
Section 2122.A.–2122A.1	Fugitive Emission Control for Ozone Nonattainment Areas	8/20/04
Section 2122.A.2.–A.5	Fugitive Emission Control for Ozone Nonattainment Areas	8/20/02
Section 2122A.6.–6.d	Fugitive Emission Control for Ozone Nonattainment Areas	7/20/98
Section 2122B	Fugitive Emission Control for Ozone Nonattainment Areas Definitions	11/20/96
Section 2122B	Fugitive Emission Control for Ozone Nonattainment Areas Definitions	12/20/96
Section 2122B	Fugitive Emission Control for Ozone Nonattainment Areas Definitions	8/20/04
Section 2122C.1.a.–2122.C.1.b	Fugitive Emission Control for Ozone Nonattainment Areas	8/20/04
Section 2122.C.1.c	Fugitive Emission Control for Ozone Nonattainment Areas	11/20/96
Section 2122.C.1.d	Fugitive Emission Control for Ozone Nonattainment Areas	7/20/98
Section 2122.C.4	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	8/20/04
Section 2122.D.1.a	Fugitive Emission Control for Ozone Nonattainment Areas	11/20/96
Section 2122.D.1.d–f	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	8/20/04
Section 2122.D.3.b	Fugitive Emission Control for Ozone Nonattainment Areas	8/20/04
Section 2122.D.3.d	Fugitive Emission Control for Ozone Nonattainment Areas	11/20/96
Section 2122.D.3.e	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	8/20/04
Section 2122.D.4.h	Fugitive Emission Control for Ozone Nonattainment Areas	1/20/98
Section 2122.D.4.k.–l	Fugitive Emission Control for Ozone Nonattainment Areas	11/20/96
Section E.1.–4	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	12/20/96
Section 2122.E.1.g	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	8/20/04
Section 2122.E.3.–5	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	8/20/04
Section 2122.G	Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes.	10/20/05
Subchapter B. Organic Solvents		
Section 2123.B.1	Organic Solvents	7/20/99
Section 2123.B.2	Organic Solvents	1/20/98
Section 2123.C	Organic Solvents	1/20/98
Section 2123.C.11	Organic Solvents	5/20/96
Section 2123.C.11.b	Organic Solvents	12/20/97
Section 2123.D.1	Organic Solvents	10/20/05
Section 2123.D.6	Organic Solvents	8/20/02
Section 2123.D.7.a	Organic Solvents	4/20/04
Section 2123.E.6	Organic Solvents	7/20/98
Section 2123.G	Organic Solvents Definitions	12/20/97
Section 2123.G	Organic Solvents Definitions	1/20/98
Section 2123.H	Organic Solvents	4/20/04
* * * * * * *		
Subchapter E. Vapor Degreasers		
Section 2125.D	Vapor Degreasers	4/20/04
Section 2125.E.1.–4	Vapor Degreasers	12/20/96

TABLE 2—REVISIONS PROPOSED FOR APPROVAL—Continued

State citation	Title/subject	State adoption date
* * * * * * *		
Subchapter E		
Subchapter E	Perchloroethylene Dry Cleaning System	8/20/96
Section 2129	Perchloroethylene Dry Cleaning System	8/20/96
* * * * * * *		
Subchapter F. Gasoline Handling		
Section 2131.A	Filling of Gasoline Storage Vessels	12/20/93
Section 2131.D.3	Filling of Gasoline Storage Vessels	2/20/01
Section 2131.E.1. and E.4	Filling of Gasoline Storage Vessels	12/20/96
* * * * * * *		
Section 2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities		
Section 2132.A	Definitions	12/20/97
Section 2132.A	Definitions	4/20/03
Section 2132.B	Applicability	1/20/98
Section 2132.B.4.a.–d	Applicability	1/20/98
Section 2132.B.5	Applicability	4/20/03
Section 2132.B.6.b	Applicability	12/20/97
Section 2132.B.6.c.iii	Applicability	12/20/97
Section 2132.D	Testing	12/20/97
Section 2132.D.2	Testing	4/20/03
Section 2132.E	Labeling	12/20/97
Section 2132.F	Inspection	12/20/97
Section 2132.G	Recordkeeping	12/20/97
Section 2132.G.5	Recordkeeping	4/20/03
Section 2132.H	Enforcement	12/20/97
Section H.1.a.–b	Enforcement	4/20/03
Section 2132.I	Fees	12/20/97
Section 2133.A.–E	Gasoline Bulk Plants	6/20/95
Section 2133.D.2	Gasoline Bulk Plants	12/20/96
Section 2135.A	Bulk Gasoline Terminal	1/20/98
Section 2135.D.1.–4	Bulk Gasoline Terminal	12/20/96
Section 2137.A.–A.1. and B.1	Gasoline Terminal Vapor—Tight Control Procedure	12/20/96
* * * * * * *		
Subchapter G. Petroleum Refinery Operations		
Section 2139.C	Refinery Vacuum Producing Systems	5/20/98
* * * * * * *		
Subchapter H. Graphic Arts		
Section 2143.A	Graphic Arts (Printing) by Rotogravure and Flexographic Processes. Control Requirements.	4/20/04
Section 2143.A.1	Graphic Arts (Printing) by Rotogravure and Flexographic Processes. Control Requirements.	10/20/99
Section 2143.B	Applicability Exemption	4/20/04
Section 2143.C.1.–3	Compliance	12/20/96
Section 2143.E	Timing	4/20/04
* * * * * * *		
Subchapter I. Pharmaceutical Manufacturing Facilities		
* * * * * * *		
Section 2145.F.2.–3	Pharmaceutical Manufacturing Facilities	12/20/96
Section 2145.F.4	Pharmaceutical Manufacturing Facilities	1/20/98

TABLE 2—REVISIONS PROPOSED FOR APPROVAL—Continued

State citation	Title/subject	State adoption date
* * * * * * *		
Subchapter J. Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)		
* * * * * * *		
Section 2147.A.1	Applicability	4/20/04
Section 2147.B	Definitions	12/20/96
Section 2147.B	Definitions	11/20/97
Section 2147.D.1.a	Total Effectiveness Determination, Performance Testing, and Exemption Testing	11/20/97
Section 2147.D.3.–2147.D.4	Total Effectiveness Determination, Performance Testing, and Exemption Testing	7/20/98
Section D.5.a., D.5.a.ii.(a)–(b), D.5.b.i. and iii., D.5.c.–f.	Total Effectiveness Determination, Performance Testing, and Exemption Testing	12/20/96
Section 2147.D.7.–2147.D.9	Total Effectiveness Determination, Performance Testing, and Exemption Testing	11/20/97
* * * * * * *		
Subchapter K. Limiting Volatile Organic Compound (VOC) Emissions from Batch Processing		
Section 2149.A.1	Applicability	4/20/04
Section 2149.E.2.a.c.i	Performance Testing	12/20/96
* * * * * * *		
Subchapter L. Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing		
* * * * * * *		
Section 2151.A	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.	4/20/04
Section 2151.B., 2151.C., 2151.C.2–C.3., 2151.D.–E	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.	1/20/98
Section 2151.F	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.	4/20/04
* * * * * * *		
Subchapter M. Limiting VOC Emissions from Industrial Wastewater		
* * * * * * *		
Section 2153.A	Definitions	5/20/99
Section 2153.A	Definitions	4/20/04
Section 2153.B., 2153.B.1.d.–d.ii., 2153.B.3.–4.b.	Control Requirements	5/20/99
Section 2153.D.2.c., 2153.D.3.h.iii.(b)–4.b.	Inspection and Monitoring Requirements	5/20/99
Section 2153.E.1.–5	Approved Test Methods	12/20/96
Section 2153.E.7.–10	Approved Test Methods	5/20/99
Section 2153.F.5	Recordkeeping Requirements	5/20/99
Section 2153.H.1	Determination of Wastewater Characteristics	5/20/99
2153.I	Limiting VOC Emissions From Industrial Wastewater	4/20/04
* * * * * * *		
Subchapter N. Method 43 Capture Efficiency Test Procedures		
* * * * * * *		
Subchapter N	Subchapter N	12/20/96
Section 2155	Principle	12/20/96
Section 2156.A	Definitions	12/20/97
Section 2156.A	Definitions	10/20/03
Section 2157.A	Applicability	12/20/97
Section 2157.B	Applicability	8/20/01
Section 2158.C.1.–4	Specific Requirements	8/20/01
Section 2159.D.–E	Recordkeeping and Reporting	8/20/01
Section 2160	Procedures	12/20/96
Section 2160.A.–2160.B	Procedures	8/20/01
Section 2160.C.4.d	Procedures	7/20/98
Section 2160.D.4.d	Procedures	7/20/98

TABLE 2—REVISIONS PROPOSED FOR APPROVAL—Continued

State citation	Title/subject	State adoption date
Section 2199	Appendix A	11/20/97
* * * * * * *		
Chapter 22. Control of Emissions of Nitrogen Oxides NO_X		
* * * * * * *		
Section 2201.B	Definitions	4/20/04
Section 2201.C.1.–3	Exemptions	4/20/04
Section 2201.C.8	Exemptions	4/20/04
Section 2201.D.1	Emission Factors	4/20/04
Section 2201.D.4	Emission Factors	4/20/04
Section 2201.F.1.a	Permits	4/20/04
Section 2201.F.1.a.5	Permits	4/20/04
Section 2201.F.1.c	Permits	4/20/04
Section 2201.F.7.a	Permits	10/20/05
Section 2201.G.2	Initial Demonstration of Compliance	4/20/04
Section 2201.H1.b.iii	Continuous Demonstration of Compliance	4/20/04
Section 2201.H.2	Continuous Demonstration of Compliance	4/20/04
Section 2201.H.3	Continuous Demonstration of Compliance	4/20/04
* * * * * * *		
Chapter 23. Control of Emissions for Specific Industries		
Subchapter A. Chemical Woodpulping Industry		
Section 2301.D. and 2301.D.3	Control of Emissions from the Chemical Woodpulping Industry Emission Limitations.	12/20/93
Section 2301.D.4.a	Control of Emissions from the Chemical Woodpulping Industry Emission Limitations.	10/20/05
Section 2301.E	Exemptions	10/20/06
Subchapter B. Aluminum Plants		
Section 2303.E	Standards for Horizontal Study Doderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants. Monitoring.	10/20/05
Section 2303.F.1.d.2	Standards for Horizontal Study Doderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants. Reporting.	10/20/05
* * * * * * *		
Subchapter D. Nitric Acid Industry		
* * * * * * *		
Section 2307.C.1.a	Emission Standards for the Nitric Acid Industry	10/20/05
Section 2307.C.2.a	Emission Standards for the Nitric Acid Industry	10/20/05
* * * * * * *		
Chapter 25. Miscellaneous Incinerator Rules		
* * * * * * *		
Subchapter B. Biomedical Waste Incinerator		
* * * * * * *		
Section 2501	Scope	10/20/94
Section 2511	Standards of Performance for Biomedical Waste Incinerators	10/20/94
Section 2511.B	Definitions	7/20/98
Section 2511.C	Registration	10/20/05
Section 2511.E.5	Restrictions on Emissions	10/20/95
Section 2511.E.6.1.–5	Restrictions on Emissions	12/20/96

TABLE 2—REVISIONS PROPOSED FOR APPROVAL—Continued

State citation	Title/subject	State adoption date
* * * * * * *		
Subchapter C. Refuse Incinerators		
Section 2521	Refuse Incinerators	10/20/94
Section 2521.E. and 2521.F.9.a.–d	Refuse Incinerators	12/20/96
Section 2521.F.10	Refuse Incinerators	10/20/05
* * * * * * *		
Chapter 30. Standards of Performance from New Stationary Sources (NSPS)		
Chapter 30	Standards of Performance from New Stationary Sources (NSPS)	12/20/96
* * * * * * *		
Chapter 60. Test Methods		
Chapter 60	Test Methods	12/20/96
* * * * * * *		
Chapter 61. Division's Source Test Manual		
Chapter 61	Division's Source Test Manual	12/20/96
* * * * * * *		
Chapter 65. Rules and Regulations of the Fee System of the Air Quality Control Program		
Chapter 65	Rules and Regulations of the Fee System of the Air Quality Control Program	11/20/93
* * * * * * *		

IV. Why can we approve these revisions?

The rule revisions submitted were examined for consistency with Federal policy, regulations, and the Clean Air Act. Each rule revision referred to in Table 2 of this document was reviewed separately and found to be approvable on its own merits. A detailed evaluation of each of the approved rules is contained in the Technical Support Document for this rulemaking.

V. What are some of the substantive rule changes?

In Chapter 7, ambient air quality standards were updated to reflect Federal standards that were current at the time of the revision.

All of chapter 19 was repealed. This chapter contained vehicle inspection and maintenance (I/M) rules that became obsolete when the I/M program was finally authorized and administered under the existing rules of the State safety inspection program. The I/M rules in chapter 19 had not been submitted for approval into the SIP, so no backsliding is implied by the repeal. In addition, clean fuel fleet rules were repealed from this chapter. Although these rules had been approved into the SIP, stationary source VOC (volatile organic compound) rules were substituted for the clean fuel fleet program, so no backsliding occurred. *See* 64 FR 38577, July 19, 1999.

There were a number of substantive changes in chapter 21. Under storage of volatile organic compounds (section 2103) LDEQ added (1) VOC requirements for Calcasieu and Pointe Coupee Parishes, (2) other acceptable methods for determining true vapor pressure, (3) additional record keeping requirements to verify compliance, and (4) an allowance for maintaining VOC control equipment. New requirements for crude oil and condensate in section 2104 add VOC control requirements for "flash gas" emissions from facilities that produce oil and natural gas, process natural gas, and transmit natural gas, which are consistent with the CAA.

The marine vapor recovery exemption in section 2108 is lowered to 25 tons per year to ensure RACT (Reasonably Available Control Technology) is in place. Similarly, the revisions to the waste gas disposal rules in section 2115 make sure RACT is in place for these vent streams.

The list of compounds exempt from VOC control requirements in section 2117 is expanded to keep the list up to date with the Federal list of exempted compounds. Changes in section 2122, Fugitive Emissions Control for Ozone Nonattainment Areas, improve the rule by making it more consistent with the Federal Leak Detection and Repair Program (LDAR) requirements.

The VOC requirements for vapor degreasers are strengthened in section 2125. Section 2129 concerning perchlorethylene is rescinded because EPA exempted "perc" from VOC control. St. Mary Parish is now included in the areas where filling of gasoline storage vessels is controlled in section 2131. A revision to section 2133 lowers the exemption threshold for gasoline bulk plants.

The following sections change the major source threshold from 50 to 25 tons per year (tpy) in the nonattainment parishes and 50 tpy in Pointe Coupee and Calcasieu Parishes: section 2143 pertaining to graphic arts and rotogravure and flexographic processes, 2147 that limits the VOC emissions from SOCMI (synthetic organic chemical manufacturing industry) reactor processes and distillation operations, 2149 that limits the VOC emissions from batch processes, 2151 that limits VOC

emissions from cleanup solvent processes, and 2153 that limits VOC emissions from industrial wastewater. By lowering the applicability level, the revisions ensure that RACT is in place on 25 tpy and greater sources as required for severe ozone nonattainment areas.

VI. Proposed Action

We are proposing approval of rule revisions to LAC 33:III, Chapters 1, 7, 9, 11, 13, 15, 19, 21, 22, 23, 25, 30, 60, 61, and 65 as part of the Louisiana SIP as they appear in Table 2 above.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this 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 rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 15, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–4247 Filed 2–24–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[Docket No. USCG–2010–1124]

Application for Foreign Rebuilding Determination

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: The Coast Guard seeks public comments on a petition for rulemaking that requests the Coast Guard to amend 46 CFR 67.177, Application for foreign rebuilding determination. The Coast Guard will consider all comments received as part of its determination on whether or not to initiate the requested rulemaking.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 26, 2011, or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1124 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Commander Sandra Selman, Executive Secretary, Maritime Safety and Security Council, U.S. Coast Guard; telephone 202–372–3857, e-mail *Sandra.K.Selman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2010–1124), indicate the specific section of the petition for rulemaking to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and type "USCG–2010–1124" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in

an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period in determining how to respond to this petition for rulemaking.

B. Viewing Comments and Documents

To view comments and the petition referenced in this notice, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box type "USCG–2010–1124" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Description of Petition for Rulemaking

Any member of the public may petition the Coast Guard to undertake a rulemaking action. 33 CFR 1.05–20(a). After considering the petition and any other relevant information, the Coast Guard will notify the petitioner of its decision to initiate a rulemaking or not. 33 CFR 1.05–20(b). This notice seeks comment on the rulemaking petition described next.

Marc J. Fink, on behalf of a coalition of maritime organizations, is petitioning the Coast Guard to amend 46 CFR 67.177, Application for foreign rebuilding determination. The petition requests that the Coast Guard—

- Amend major-component test provisions in paragraph (a),
- Amend considerable-parts test provisions in paragraph (b),
- Amend criteria for when vessels altered outside the United States must submit material to the National Vessel Document Center (NVDC) and what materials must be submitted in paragraph (e),
- Amend preliminary rebuilt determinations application requirements in paragraph (g),
- Add a new paragraph (h) requiring the Coast Guard to publish **Federal Register** notices of applications for a preliminary or final rebuilt determination and to establish procedures that would allow anyone to appeal these application decisions to the Coast Guard Commandant, and
- Add a paragraph (i) requiring the owner of a vessel that is eligible to engage in the coastwise trades that had any work performed on that vessel at a facility outside the United States to submit U.S. Customs and Border Protection Form 226, Record of Vessel Foreign Repair or Equipment Purchase, to the Commandant within 30 days of redelivery of the vessel after such work was completed.

The petition with its three exhibits, available in the docket as indicated under **ADDRESSES**, includes an expanded discussion on the requested amendments and revisions to 46 CFR 67.177. The complete list of material submitted by the petitioner is as follows:

- M.J. Fink December 9, 2010 letter to MSSC (*http://www.regulations.gov/#!documentDetail;D=USCG-2010-1124-0002.1*).
- Petition for Rulemaking to Amend 46 CFR 67.177 (*http://www.regulations.gov/#!documentDetail;D=USCG-2010-1124-0001.1*).
- Exhibit A–1 to Petition to Amend 46 CFR 67.177 (*http://www.regulations.gov/#!documentDetail;D=USCG-2010-1124-0003.1*).
- Exhibit A–2 to Petition to Amend 46 CFR 67.177 (*http://www.regulations.gov/#!documentDetail;D=USCG-2010-1124-0004.1*).
- Exhibit B—Shipbuilders Council of America (SCA) Membership List (*http://www.regulations.gov/#!documentDetail;D=USCG-2010-1124-0005.1*).

The public is invited to review the material contained in the docket and submit relevant comments, including comments on whether rulemaking would be beneficial, or not. The Coast Guard will consider the petition, any comments received from the public, and other information to determine whether or not to initiate the requested rulemaking.

This notice is issued under authority of 33 CFR 1.05–20 and 5 U.S.C. 552(a).

Dated: February 18, 2011.

F.J. Kenney,

Rear Admiral, Judge Advocate General, Chairman, Marine Safety and Security Council.

[FR Doc. 2011–4215 Filed 2–24–11; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 76, No. 38
Friday, February 25, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–11–0004; FV11–916/917–3 NC]

Marketing Orders for Nectarines and Peaches Grown in California; Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval for new forms to be used to collect information related to Federal marketing orders for nectarines and peaches grown in California.

DATES: Comments on this notice must be received by April 26, 2011 to be assured of consideration.

Additional Information: Contact Andrew Hatch, Supervisory Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–6862, Fax: (202) 720–8938, E-mail: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on this notice by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 690–3919, Fax: (202) 720–8938, or E-mail: *antoinette.carter@ams.usda.gov.*

Comments: Comments should reference the document number and the date and page number of this issue of the **Federal Register,** and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted through the Internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Marketing Orders for Nectarines and Peaches.

OMB Number: 0581–NEW.

Expiration Date of Approval: None.

Type of Request: Approval of new information collection.

Abstract: Marketing orders provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Among the 32 active Federal marketing orders are programs for nectarines and peaches grown in California. Regulations may determine the products' grade, size and quality; set container and pack requirements; and authorize research and market development projects. The nectarine and peach marketing orders are locally administered by staff of the California Tree Fruit Agreement (CTFA) under USDA's supervision.

Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act) as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The State of California, under its own regulations, managed separate marketing orders for nectarines and peaches grown in their State. However, following a vote conducted by the California Department of Food and Agriculture on November 24, 2010, industry members opted to terminate the State nectarine and peach marketing orders, effective on February 28, 2011. Consequently, CTFA and USDA are proposing to absorb five previous State forms into the Federal package of forms so that necessary industry information can still be collected.

The currently-approved forms contained in OMB Number 0581–0189 are used by industry committees operating the following marketing order programs under citations 7 CFR parts: 905 (Florida citrus), 906 (Texas citrus), 915 (Florida avocados), 916 (California nectarines), 917 (California peaches and pears), 920 (California kiwifruit), 922 (Washington apricots), 923 (Washington cherries), 924 (Oregon/Washington prunes), 925 (California table grapes), 927 (Oregon/Washington pears), and 929 (cranberries grown in 10 States).

Approval of five new forms is necessary to continue collecting information required by the nectarine and peach marketing orders. Once approved, they will be merged into the generic fruit crop package, approved by OMB under 0581–0189. The forms used under the now terminated State programs would be reformatted and used in the continuing Federal marketing orders. The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs.

The forms would facilitate the collection of industry information and are titled "Daily Packout Report," "Export Peach Destination Report," "Grower Report," "Nectarine Shipment Report," and "Peach Shipment Report." The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders. The information collected is used only by authorized employees of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff. Authorized CTFA employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .025 hours per response.

Respondents: Handlers.

Estimated Number of Respondents: 97.

Estimated Number of Responses: 11,170.

Estimated Number of Responses per Respondent: 126.

Estimated Total Annual Burden on Respondents: 2,878.70 hours.

Comments are invited on: (1) Whether the proposed collection of the

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. All comments received will be available for public inspection at the street address in the "Comment" section and can be viewed at: *http://www.regulations.gov.*

Dated: February 18, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4266 Filed 2–24–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2010–0036]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fish and Fishery Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Center for Food Safety and Applied Nutrition, Food and Drug Administration (FDA), are sponsoring a public meeting on March 16, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 31st session of the Codex Committee on Fish and Fishery Products (CCFFP) of the Codex Alimentarius Commission (Codex), which will be held in Tromso, Norway, April 11–16, 2011. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 31st session of the CCFFP and to address items on the agenda.

DATES: The public meeting is scheduled for March 16, 2011, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held at FDA, in the Harvey W. Wiley Building, Auditorium (1A003), 5100 Paint Branch Parkway, College Park, MD 20740.

Documents related to the 31st session of the CCFFP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Donald Kraemer, U.S. Delegate to the 31st session of the CCFFP, and FDA, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *Donald.Kraemer@fda.hhs.gov.*

Call-In Number

If you wish to participate in the public meeting for the 31st session of the CCFFP by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1–866–692–3158
Participant Code: 5986642

For Further Information About the 31st Session of the CCFFP Contact: Donald Kraemer, Acting Director, Office of Seafood, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway, College Park, MD 20740, phone: (301) 436–2300, fax: (301) 436–2599, e-mail: *Donald.Kraemer@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, phone: (202) 690–4042, fax: (202) 720–3157, e-mail: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFFP is responsible for elaborating worldwide standards for fresh, frozen (including quick frozen) or otherwise processed fish, crustaceans, and mollusks.

The CCFFP is hosted by Norway.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 31st session of the CCFFP will be discussed during the public meeting:

- Matters Referred to the CCFFP, Codex, and Other Codex Committees.
- Matters Arising from the Work of the FAO and WHO.
- Draft Standard for Fish Sauce.
- Draft Standard for Smoked Fish, Smoke-Flavoured Fish and Smoke Dried Fish.
- Proposed Draft Code of Practice for Fish and Fishery Products (Other Sections Including Smoked Fish).
- Proposed Draft Amendment to Section 3.4.5.1 Water Code of Practice for Fish and Fishery Products.
- Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat.
- Proposed Draft Code of Practice on the Processing of Scallop Meat.
- Proposed Draft Revision of the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products.
- Proposed Draft List of Methods for Determination of Biotoxins in the Standard for Raw and Live Bivalve Mollusks.
- Proposed Draft Standards for Fresh/Live and Frozen and Frozen Abalone (*Haliotis* spp.).
- Proposed Draft Amendment to the Standard for Quick Frozen Fish Sticks.
- Proposed Food Additive Provisions in Standards for Fish and Fishery Products.
- Model Certificates.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the March 16, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 31st session of the CCFFP, Donald Kraemer (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 31st session of the CCFFP.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family

status. (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 TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: February 18, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–4265 Filed 2–24–11; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 7–9, 2011, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, March 7, 2011

9:30–Noon Technical Programs Committee.

1:30–2 p.m. Budget Committee.

2:15–3 Planning and Evaluation Committee.

3:15–4 Presentation from the Bureau of Engraving and Printing on accessible currency.

Tuesday, March 8, 2011

9:30–4 p.m. Ad Hoc Committee Meetings: Closed to Public.

Wednesday, March 9, 2011

9:30–11 a.m. Presentation on the Implementation of Section 508.

1:30–3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, March 9, 2011, the Access Board will consider the following agenda items:

- Approval of the draft January 12, 2011 meeting minutes.
- Budget Committee Report.
- Planning and Evaluation Committee Report.
- Technical Programs Committee Report.
- Ad Hoc Committee Reports
  - Emergency Transportable Housing—Notice of Proposed Rulemaking (vote).
  - Election of Officers.
  - Executive Director's Report.
  - Public Comment, Open Topics.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (*see http://www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2011–4246 Filed 2–24–11; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 25, 2011.

SUMMARY: The Department of Commerce ("Department") has determined that a request for a new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC") meets the statutory and regulatory requirements for initiation. The period of review ("POR") for the new shipper review is January 1, 2010, through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005. *See Notice of Amended Final*

Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China, 70 FR 329 (January 4, 2005). On January 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Dongguan Yujia Furniture Co., Ltd. ("Dongguan Yujia"). Dongguan Yujia certified that it is both the exporter and producer of the subject merchandise upon which its request for a new shipper review is based. On February 3, 2011, the Department placed entry data received from U.S. Customs and Border Protection ("CBP") on the record of this proceeding and requested comments from interested parties. On February 7, 2011, the Department issued a supplemental questionnaire to Dongguan Yujia. On February 10, 2011, Dongguan Yujia submitted comments regarding the entry data received from CBP. On February 14, 2011, Dongguan Yujia submitted its supplemental response. On February 15, 2011, the Department received additional U.S. entry documents from CBP.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Dongguan Yujia certified that it did not export wooden bedroom furniture to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Dongguan Yujia certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported wooden bedroom furniture to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Dongguan Yujia also certified that its export activities were not controlled by the central government of the PRC. *See generally* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office 4: Initiation of AD New Shipper Review of Dongguan Yujia Furniture Co., Ltd.: Wooden Bedroom from the People's Republic of China ("Initiation Checklist"), dated concurrently with this notice.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Dongguan Yujia submitted documentation establishing the following: (1) The date on which it first shipped wooden bedroom furniture for export to the United States and the date on which the wooden bedroom furniture was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States. *See generally* Initiation Checklist.

The Department conducted CBP database queries. The Department confirmed by examining the results of a CBP data query and CBP entry documents that Dongguan Yujia's merchandise entered the United States during the POR as specified by the Department's regulations. *See* 19 CFR 351.214(g)(1)(i)(A). Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary month of the order.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Dongguan Yujia meets the threshold requirements for initiation of a new shipper review of its shipment(s) of wooden bedroom furniture from the PRC. *See generally* Initiation Checklist. The POR for the new shipper review of Dongguan Yujia is January 1, 2010, through December 31, 2010. *See* 19 CFR 351.214(g)(1)(i)(A). The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Dongguan Yujia which will include a separate rate section. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of wooden bedroom furniture.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Dongguan Yujia in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Dongguan Yujia certified that it both produces and exports the subject merchandise, the sales of which form the basis for its new shipper review request, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which the respondent both produced and exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4279 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 25, 2011.

SUMMARY: The Department of Commerce ("Department") hereby publishes a list of scope rulings completed between July 1, 2010, and September 30, 2010. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of September 30, 2010. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–1394.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent notification of scope rulings was published on December 20, 2010. *See Notice of Scope Rulings,* 75 FR 79339 (December 20, 2010). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between July 1, 2010, and September 30, 2010, inclusive, and

it also lists any scope or anticircumvention inquiries pending as of September 30, 2010. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between July 1, 2010, and September 30, 2010:

People's Republic of China

A–570–803: Heavy Forged Hand Tools from the People's Republic of China. Requestor: Olympia Tools; stubby bar is not within the scope of the antidumping duty order; August 27, 2010.

A–570–827: Cased Pencils from the People's Republic of China. Requestor: Inspired Design LLC; pencils in its Pedestal Pets Sets are within the scope of antidumping duty order, July 9, 2010.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China. Requestor: Academy Sports & Outdoors; its bistro sets, consisting of two chairs and a table, are not within the scope of the antidumping duty order; July 27, 2010.

A–570–899: Artist Canvas from the People's Republic of China. Requestor: Masterpiece Artist Canvas, Inc.; its scrapbooking canvases are within the scope of the antidumping duty order; July 19, 2010.

A–570–909: Steel Nails from the People's Republic of China. Requestor: Target Corporation; six household toolkits, including brass coated steel nails, taken as a whole, are not within the scope of the antidumping duty order; August 10, 2010.

A–570–909: Steel Nails from the People's Republic of China. Requestor: Itochu Building Products, Inc.; Grip Rite fasteners are within the scope of the antidumping duty order; July 21, 2010.

A–570–932: Steel Threaded Rod from the People's Republic of China. Requestor: Elgin Fastener Group; hex collared stud is not within the scope of the antidumping duty order; August 11, 2010.

A–570–932: Steel Threaded Rod from the People's Republic of China. Requestor: Hubbell Power Systems, Inc.; the Double Arming Bolt is within the scope of the antidumping duty order; September 10, 2010.

Germany

A–428–801: Ball Bearings and Parts from Germany. Requestor: myonic GmbH; its turbocharger spindle units are within the scope of the antidumping duty order; July 14, 2010.

United Kingdom

A–412–801: Ball Bearings and Parts Thereof from the United Kingdom. Requestor: Hawker Pacific Aerospace; its ball assembly for a locking spring is within the scope of the antidumping duty order; July 15, 2010.

Anticircumvention Determinations Completed Between July 1, 2010, and September 30, 2010: None.

Scope Inquiries Terminated Between July 1, 2010, and September 30, 2010:

A–570–806: Silicon Metal from the People's Republic of China. Requestor: Globe Metallurgical Inc.; whether silicon metal exported by Ferro-Alliages et Mineraux Inc. ("Ferro-Alliages") to the United States from Canada is within the scope of the antidumping duty order; initiated February 10, 2009; preliminary rescission ruling issued August 12, 2010.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China. Requestor: ESM Group Inc.; whether U.S.-origin ingots atomized in the People's Republic of China are within the scope of the antidumping duty order; initiated April 18, 2007; preliminary ruling issued August 27, 2008, withdrawn by ESM Group Inc. on August 13, 2010.

Anticircumvention Inquiries Terminated Between July 1, 2010, and September 30, 2010:

A–570–928: Uncovered Innerspring Units from the People's Republic of China. Requestor: Leggett & Platt, Incorporated; whether coils (including individual coils, coil strips, and other made-up articles of innerspring units) and border rods from the People's Republic of China, which are assembled post-importation into innerspring units in the United States, are circumventing the antidumping duty order; requested March 15, 2010, withdrawn by Leggett & Platt, Incorporated on September 20, 2010.

Scope Inquiries Pending as of September 30, 2010:

Italy

A–475–801: Ball Bearings and Parts Thereof from Italy. Requestor: Caterpillar, Inc.; whether turntable slewing rings used in hydraulic excavators (part numbers 1855622 and 1885072) manufactured by SKF RIV–SKF Officine di Villar Perosa S.p.A., SKF Industrie S.p.A., OMVP S.p.A., and Somecat S.p.A. (collectively "SKF Italy") are within the scope of the antidumping duty order; requested July 27, 2010.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China. Requestor: Trade Associates Group, Ltd.; whether its candles (multiple designs) are within the scope of the antidumping duty order; requested June 11, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China. Requestor: Sourcing International, LLC; whether its flower candles are within the scope of the antidumping duty order; requested June 24, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China. Requestor: Sourcing International; whether its candles (multiple designs) are within the scope of the antidumping duty order; requested July 28, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China. Requestor: Sourcing International; whether its floral bouquet candles are within the scope of the antidumping duty order; requested August 25, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China. Requestor: Candym Enterprises Ltd.; whether its vegetable candles are within the scope of the antidumping duty order; requested November 9, 2009.

A–570–601: Tapered Roller Bearings from the People's Republic of China. Requestor: Blackstone OTR LLC and OTR Wheel Engineering, Inc.; whether certain wheel hub units are within the scope of the antidumping duty order; requested March 3, 2010.

A–570–601: Tapered Roller Bearings from the People's Republic of China. Requestor: New Trend Engineering Limited; whether certain wheel hub units are within the scope of the antidumping duty order; requested March 5, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Target Corporation; whether its kid's accent table is within the scope of the antidumping duty order; requested March 18, 2010; initiated May 3, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Legacy Classic Furniture; whether its heritage court bench is within the scope of the antidumping duty order; requested June 16, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Delta Enterprise Corporation; whether its crib and changing table combo collection is within the scope of the antidumping duty order; requested September 23, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Emerald Home Furnishings; whether its granite and wood vanity is within the scope of the antidumping duty order; initiated August 27, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of

China. Requestor: Stork Craft Manufacturing; whether its infant (baby) changing table is within the scope of the antidumping duty order; initiated August 20, 2010.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Bond Street; whether the slide flat cart is within the scope of the antidumping duty order; requested December 8, 2006.

A–570–909: Certain Steel Nails from the People's Republic of China. Requestor: Mazel & Co., Inc.; whether its roofing nails are within the scope of the antidumping duty order; requested July 28, 2010.

A–570–922/C–570–923: Raw Flexible Magnets from the People's Republic of China. Requestor: InterDesign; whether its raw flexible magnets are within the scope of the antidumping duty and countervailing duty orders; requested March 26, 2010; initiated May 18, 2010.

A–570–922/C–570–923: Raw Flexible Magnets from the People's Republic of China. Requestor: Medical Action Industries, Inc.; whether its raw flexible magnets and a surgical instrument drape are within the scope of the antidumping duty and countervailing duty orders; requested June 14, 2010; initiated September 13, 2010.

A–570–932: Steel Threaded Rod from the People's Republic of China. Requestor: Elgin Fastener Group; whether its cold headed double threaded ended bolt is within the scope of the antidumping duty order; requested November 4, 2009.

A–570–937/C–570–938: Citric Acid and Certain Citrate Salts from the People's Republic of China. Requestor: Global Commodity Group LLC; whether its blends of citric acid and blends of citrate salts are within the scope of the antidumping duty and countervailing duty orders; requested August 9, 2010.

A–570–943: Oil Country Tubular Goods from the People's Republic of China. Requestor: TMK IPSCO; whether all green tubes are within the scope of the antidumping duty order; requested September 30, 2010.

Multiple Countries

A–533–838/C–533–839/A–570–892: Carbazole Violet Pigment 23 from India and the People's Republic of China. Requestor: Nation Ford Chemical Co., and Sun Chemical Corp.; whether finished carbazole violet pigment exported from Japan is within the scope of the antidumping duty and countervailing duty orders; requested February 23, 2010.

Anticircumvention Rulings Pending as of September 30, 2010:

A–570–849: Certain Cut-to-Length Carbon Steel from the People's Republic of China. Requestor: ArcelorMittal USA, Inc.; Nucor Corporation; SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills; whether certain cut-to-length carbon steel plate from the People's Republic of China that contains a small level of boron, involves such a minor alteration to the merchandise that is so insignificant that the plate is circumventing the antidumping duty order; requested February 17, 2010; initiated April 16, 2010.

A–570–894: Certain Tissue Paper Products from the People's Republic of China. Requestor: Seaman Paper Company of Massachusetts, Inc.; whether certain imports of tissue paper from the Socialist Republic of Vietnam are circumventing the antidumping duty order through means of third country assembly or completion; requested February 18, 2010; initiated April 5, 2010.

A–570–918: Steel Wire Garment Hangers from the People's Republic of China. Requestor: M&B Metal Products Inc.; whether certain imports of steel wire garment hangers from the Socialist Republic of Vietnam are circumventing the antidumping duty order through means of third country assembly or completion of merchandise imported from the PRC; requested May 5, 2010; initiated July 22, 2010.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: January 5, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4286 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA160

Marine Mammals; File No. 15530

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Robin Baird, PhD, Cascadia Research, 218 ½ W. 4th Avenue, Olympia, WA 98501, has applied in due form for a permit to take marine mammals in the Pacific Ocean for the purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 28, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15530 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s): *See* **SUPPLEMENTARY INFORMATION.**

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed below. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 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: Laura Morse or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dr. Baird proposes to conduct research on forty species of cetaceans and unidentified mesoplodon and baleen species in all U.S. and international waters in the Pacific Ocean, including Alaska, Washington, Oregon, California, Hawaii, and other U.S. territories. Eight of the forty species to be targeted for research are listed as endangered or have a stock listed as endangered: blue whale (*Balaenoptera*

musculus), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*), right whale (*Eubalaena japonica*), sei whale (*B. borealis*), beluga whale (*Delphinapterus leucas*) Cook Inlet stock, killer whale (*Orcinus orca*) southern resident stock, and sperm whale (*Physeter macrocephalus*). The false killer whale (*Pseudorca crassidens*) Hawaiian insular stock is proposed for listing under the ESA. Seven species of pinnipeds may be incidentally harassed from research activities, including three species listed as endangered: Steller sea lions (*Eumetopias jubatus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Hawaiian monk seals (*Monachus schauinslandi*). The purposes of the proposed research are to study: (1) Population size and structure, (2) range and movement patterns, (3) diving and night-time behavior, (4) social organization, (5) feeding ecology, and (6) disease monitoring. Harassment of all species of cetaceans may occur through vessel approach for sighting surveys, photographic identification, behavioral research, opportunistic sampling (breath, sloughed skin, fecal material, and prey remains), and aerial over-flights for the purpose of locating animals and conducting aerial validation studies. All cetaceans species (except harbor porpoise, right whales, and Cook Inlet beluga whales) and unidentified mesoplodon and baleen species would be dart and/or suction-cup tagged. Import and export of marine mammal prey specimens, sloughed skin, fecal and breath samples obtained is requested for research purposes. Research would occur over a five-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft environmental assessment (EA) has been prepared to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA 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 the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

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) 427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941.

Dated: February 18, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–4292 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA248

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 (Council) is scheduling a public meeting of its Research Steering Committee (Committee), in March, 2011, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, March 16, 2011 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza, 50 Ferncroft Road, Danvers, MA 01923; *telephone:* (978) 777–2500; *fax:* (978) 750–7959.

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 committee will review all funded cooperative research projects in the Northeast over the last several years, including those approved through NOAA Fisheries, the Council's research set-aside programs, and both the Northeast Consortium and the Southern New England Research Collaborative Initiative. Information about project topic, level of funding and results will be organized in a format that will allow a clearer understanding of regional accomplishments and information gaps. The Research Steering Committee will have the opportunity to make recommendations about how to make the information collected more relevant to management, how to use research results more effectively, and also to comment on future research priorities.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 22, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–4251 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA249

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee.

DATES: The meeting will convene at 8:30 a.m. on Tuesday, March 15, 2011 and conclude no later than 12 noon.

ADDRESSES: The meeting will be held at the JW Marriott Houston, 5150 Westheimer Road, Houston, TX.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; *telephone:* (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene the Law Enforcement Advisory Panel along with the Gulf States Marine Fisheries Commission's Law Enforcement Committee to consider the status of recently completed amendments and other regulatory actions as well as the schedule for completion of ongoing actions. The two groups will also discuss and potentially make recommendations with regard to Joint Enforcement Agreements. A review and possible recommendations with regard to a recently published Proposed Rule to potentially reduce bycatch of bluefin tuna in the Gulf of Mexico will also be conducted. Finally, the two panels will review and discuss a proposal to potentially modify requirements for crew size on vessels that have both commercial and for-hire permits.

The Law Enforcement Advisory Panel consists of principal law enforcement officers in each of the Gulf States, as well as the National Oceanic and Atmospheric Administration (NOAA) Law Enforcement, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the Law Enforcement Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Law Enforcement Advisory Panel will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take 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 Kathy Pereira at the Council (*see* **ADDRESSES**) 5 working days prior to the meeting.

Dated: February 22, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–4252 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA247

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The SSC meeting will be held on March 15–16, 2011.

ADDRESSES: The meeting will be held at the Doubletree Hotel at Gallery Plaza (former Pierre Hotel), De Diego Avenue, Santurce, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The SSC will meet to discuss the items contained in the following agenda:

- Call to order.
- Queen Conch.

Update on status of queen conch in the USVI and PR.

- ACL 2011 Amendment.

Presentation/review of requirements to establish ACLs for species, which are not overfished or undergoing overfishing (ACL II) and species/species groups under consideration.

Species that need ACLs in 2011:

1. Reef Fish FMP.
2. Coral FMP.
3. Spiny Lobster FMP.
4. Queen Conch FMP.

- Issues:

1. Reporting.
2. unclassified (reef fish and queen conch).
3. list of species not included in Options Paper but included in FMPs.
4. Proposed ACLs with accompanying data.
5. Ornamental Species.

- Discussion and recommendations by SSC.

1. Species/species unit recommendations based on data, species life history, etc.
2. Indicator species recommendations for units with more than one species.
3. ACL recommendations.

- Update on Aquarium Trade.
- Review D. Olsen letter—MRAG study versus catch intercepts reporting—Validation of catch data. Discussion regarding data gathering regarding Virgin Islands commercial fishery.
- Update of St. Croix Independent Fishery Trap Survey.
- Update on status of data from PR and USVI, including issues that need to be addressed to obtain more timely data.
- Status of the implementation of MRIP in PR and plans for implementation in USVI.
- Review of specific research directed to ACLs and recommendations by SSC of type of research that should be given priority to provide information for establishing ACLs.

Essential Fish Habitat

EFH 5-year-revision document.

Discussion and Final recommendation to the CFMC SEDAR 26: Silk and queen snapper, red tail parrotfish.

Commitment to the workshops and time (Data-Assessment-Review) Other Business.

The SSC will convene on March 15, 2011, from 9 a.m. until 5 p.m., and will reconvene on March 16, 2011, from 9 a.m. until 5 p.m. The meeting is open to the public, and will be conducted in English.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language

interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 22, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–4284 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA166

Nominations for the Western and Central Pacific Fisheries Commission Advisory Committee

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

ACTION: Request for nominations.

SUMMARY: NMFS, on behalf of the Secretary of Commerce, is seeking nominations for the advisory committee established under the Western and Central Pacific Fisheries Convention Implementation Act (Act). The advisory committee, to be composed of individuals from groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention (Convention), will be given the opportunity to provide input to the United States Commissioners to the Western and Central Pacific Fisheries Commission (Commission) regarding the deliberations and decisions of the Commission.

DATES: Nominations must be received no later than April 11, 2011.

ADDRESSES: Nominations should be directed to Michael Tosatto, Acting Regional Administrator, NMFS Pacific Islands Regional Office, and may be submitted by any of the following means:

- *E-mail: pir.wcpfc@noaa.gov.* Include in the subject line the following document identifier: "Advisory committee nominations". E-mail comments, with or without attachments, are limited to 5 megabytes.
- *Mail or hand delivery:* 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814.
- *Facsimile:* 808–973–2941.

FOR FURTHER INFORMATION CONTACT: Oriana Villar, NMFS Pacific Islands Regional Office; *telephone:* 808–944–2256; *facsimile:* 808–973–2941; *e-mail: Oriana.Villar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Convention establishes the Commission, the secretariat of which is based in Pohnpei, Federated States of Micronesia.

The Convention applies to all highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the UNCLOS occurring in the Convention Area, and such other species of fish as the Commission may determine), except sauries.

The United States played a very active role in supporting the negotiations and the development of the Convention and signed the Convention when it was opened for signature in 2000. It participated as a cooperating non-member of the Commission since it became operational in 2005. The United States became a Contracting Party to the Convention and a full member of the Commission when it ratified the Convention in January 2007. Under the Act, the United States will be represented on the Commission by five United States Commissioners, appointed by the President.

Advisory Committee

The Act (16 U.S.C. 6902) provides (in section 6902(d)) that the Secretary of Commerce, in consultation with the United States Commissioners to the Commission, will appoint certain members of the advisory committee established under the Act.

The members to be appointed to the advisory committee are to include not less than 15 nor more than 20 individuals selected from the various groups concerned with the fisheries covered by the Convention, providing, to the extent practicable, an equitable balance among such groups. On behalf of the Secretary of Commerce, NMFS is now seeking nominations for these appointments.

In addition to the 15–20 appointed members, the advisory committee also includes the chair of the Western Pacific Fishery Management Council's Advisory Committee (or designee), and officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

Members of the advisory committee will be invited to attend all non-executive meetings of the United States Commissioners to the Commission and at such meetings will be given opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

Each appointed member of the advisory committee will serve for a term of two years and is eligible for reappointment.

The Secretaries of Commerce and State will furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

NMFS, on behalf of the Secretary of Commerce, will provide to the advisory committee administrative and technical support services as are necessary for its effective functioning.

Appointed members of the advisory committee will serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code. They will not be considered Federal employees while performing service as members of the advisory committee except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code and Chapter 171 of title 28, United States Code.

Procedure for Submitting Nominations

Nominations for the advisory committee should be submitted to NMFS (*see* **ADDRESSES**). Self nominations are acceptable. Nominations should include the following information: (1) Full name, address, telephone, facsimile, and e-mail of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

Authority: 16 U.S.C. 6902.

Dated: February 22, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4296 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA191

Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, CA

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the St. George Reef Lighthouse Preservation Society (SGRLPS) to incidentally harass, by Level B harassment only, four species of marine mammals during aircraft operations, and lighthouse renovation and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean, from the period of February 18, 2011, through April 30, 2011, or during the period of November 1, 2011, through December 31, 2011.

DATES: This authorization is effective from February 18, 2011, through April 30, 2011, and during the period of November 1, 2011, through December 31, 2011.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The following associated documents are also available at the same Internet address: Environmental Assessment (EA) prepared by NMFS; and the finding of no significant impact (FONSI). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 713–2289 or Monica DeAngelis, NMFS Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, and a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received a letter on October 13, 2010, from the SGRLPS requesting the taking by harassment, of small numbers of marine mammals, incidental to aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station). At NMFS' request, the SGRLPS submitted a complete and adequate application on November 3, 2010. The SGRLPS aims to: (1) Restore and preserve the Station on a monthly basis (November 1–April 30, annually); and (2) perform periodic, annual maintenance on the Station's optical light system.

The Station, which is listed in the National Park Service's National Register of Historic Places, is located on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean.

The specified activities would occur in the vicinity of a possible pinniped haul out site located on NWSR. Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system); and (4) human presence, may have the potential to cause any pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the SGRLPS has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals (*Callorhinus ursinus*) by Level B harassment.

Description of the Specified Activity

SGRLPS would conduct the proposed activities (aircraft operations, lighthouse restoration, and light maintenance activities) between February 18, 2011, through April 30, 2011, and during the period of November 1, 2011, through December 31, 2011, at a maximum frequency of one session per month. The duration for each session would last no more than three days (*e.g.,* Friday, Saturday, and Sunday).

Aircraft Operations

The SGRLPS would transport personnel and equipment from the California mainland to NWSR by a small helicopter and would transport no more than 15 work crew members and equipment to NWSR. Each session would require no more than 36 helicopter landings/takeoffs per month.

Lighthouse Restoration Activities

Restoration activities would include the removal of peeling paint and plaster, restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, and upgrading the present electrical system.

Light Maintenance Activities

The SGRLPS would need to conduct maintenance on the Station's beacon light at least once or up to two times per year within the proposed work window. Scheduled light maintenance activities would coincide with lighthouse restoration activities conducted monthly during the period of February 18, 2011, through April 30, 2011, or during the period of November 1, 2011, through December 31, 2011.

Emergency Light Maintenance

If the beacon light fails during the period from February 18, 2011, through April 30, 2011, or during the period of November 1, 2011, through December 31, 2011, the SGRLPS would send a crew of two to three people to the Station by helicopter to repair the beacon light. For each emergency repair event, the SGRLPS would conduct a maximum of four flights (two arrivals and two departures) to transport equipment and supplies.

In the case of an emergency repair between May 1, 2011, and October 31, 2011, the SGRLPS would consult with the NMFS Southwest Regional Office (SWRO) biologist to best determine the timing of the trips to the lighthouse, on a case-by-case basis, based upon the existing environmental conditions and the abundance and distribution of any marine mammals present on NWSR. The SWRO would also ensure that the SGRLPS' request for incidental take during emergency repairs would not exceed the number of incidental take authorized in the IHA.

NMFS has outlined the purpose of the program in a previous notice for the proposed IHA (75 FR 80471 December 22, 2010). The planned activities have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the proposed IHA notice (75 FR 8047, December 22, 2010).

Comments and Responses

NMFS published a notice of receipt of the SGRLPS' application and proposed IHA in the **Federal Register** on December 22, 2010 (75 FR 80471). During the 30-day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) which recommended that NMFS issue the requested authorization, provided that the required monitoring and mitigation measures are carried out (*e.g.,* restrictions on the timing and frequency of activities, restrictions on helicopter approaches, timing measures for helicopter landings, and measures to minimize acoustic and visual disturbances) as described in NMFS' December 22, 2010 (75 FR 80471) notice of the proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Description of the Specified Geographic Region

The Station is located on a small, rocky islet (41°50′24″ N, 124°22′06″ W) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46′48″ N; Longitude: 124°14′11″ W).

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific Harbor seal, the eastern (Distinct Population Segment) U.S. stock of Steller sea lion, and the eastern Pacific stock of northern fur seal. California sea lions and Pacific harbor seals are not listed as threatened or endangered under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), nor are they categorized as depleted under the MMPA. Northern fur seals are not listed as threatened or endangered under the ESA. However, they are categorized as depleted under the MMPA. Last, the Steller sea lion, eastern U.S. stock is listed as threatened under the ESA and is categorized as depleted under the MMPA.

NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the northwestern Pacific Ocean, as well as other marine mammal species that may occur around NWSR in the notice of the proposed IHA (75 FR 8047, December 22, 2010).

Potential Effects of the Activity on Marine Mammals

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); and (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system) may have the potential to cause Level B harassment of any pinnipeds hauled out on NWSR. The effects of sounds from helicopter operations and/or restoration and maintenance activities might include one of the following: temporary or permanent hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

There is a dearth of information on acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson *et al.,* 1995) and to NMFS' knowledge, there has been no specific documentation of temporary or permanent hearing impairment in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions. Any noise attributed to the SGRLPS' proposed helicopter operations on NWSR would be short-term (approximately 5 minutes per trip) and NMFS would expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. NMFS does not expect that the increased received levels of sound from the helicopter would cause temporary or permanent hearing impairment because the pinnipeds would flush before the helicopter approached NWSR; thus increasing the distance between the pinnipeds and the received sound levels on NWSR during the specified activities.

Some behavioral disturbance is expected; however NMFS expects the disturbance to be localized and short-term. If pinnipeds are present on NWSR, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from NWSR due to the pinnipeds temporarily moving from the rocks and lower structure of NWSR into the sea due to the noise and appearance of helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on the island will depart the rock and move into the water upon the initial helicopter approach.

NMFS provided a detailed overview of: (1) The sound levels produced by the helicopter; (2) behavioral reactions of pinnipeds to helicopter operations and light construction noise; (3) hearing impairment and other non-auditory physical effects; (4) behavioral reactions to visual stimuli; (5) and specific observations gathered during previous monitoring of the marine mammals present on NWSR in the notice of the proposed IHA (75 FR 8047, December 22, 2010).

Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (75 FR 8047, December 22, 2010). The SGRLPS proposes to confine all restoration activities to the existing structure which is not used by marine mammals. Thus, the specified activities will not result in any permanent impact on habitats used by the marine mammals in the area, including the food sources they use (*i.e.* fish and invertebrates), and there will be no physical damage to any habitat. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible. The main impact associated with the specified activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The SGRLPS has based the mitigation measures described herein, to be implemented for the helicopter operations and restoration activities, on the following: (1) Protocols used during the 2010 IHA for helicopter operations and restoration activities as approved by NMFS; (2) recommended best practices in Richardson *et al.* (1995); and (3) reasonable and prudent measures implemented by the terms and conditions of the section 7 ESA Biological Opinion's (BiOp) Incidental Take Statement (ITS).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities, the SGRLPS and/or its designees will implement the following mitigation measures for marine mammals:

(1) Limit the time and frequency of the restoration activities;

(2) Employ helicopter approach and timing techniques; and

(3) Avoidance of visual and acoustic contact with marine mammals by the SGRLPS and/or its designees.

Time and Frequency: The SGRLPS will conduct lighthouse restoration activities at maximum frequency of once per month between February 18, 2011, through April 30, 2011, or between November 1, 2011, through December 31, 2011. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

Helicopter Approach and Timing Techniques: The SGRLPS shall ensure that helicopter approach patterns to the lighthouse will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haul-out on NWSR.

Since the most severe impacts (stampede) are precipitated by rapid and direct helicopter approaches, initial approach to the Station must be offshore from the island at a relatively high altitude (*e.g.,* 800–1,000 ft; 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind condition) such helicopter approach and timing techniques cannot be achieved, the SGRLPS must abort the restoration and maintenance activities for that day.

Avoidance of Visual and Acoustic Contact with Marine Mammals: The SGRLPS will instruct its members and restoration crews to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse. The door to the lower platform (which is used at times by pinnipeds) shall remain closed and barricaded to all tourists and other personnel.

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including safety and practicality of implementation.

Based on our evaluation of the applicant's mitigation measures, NMFS has determined that these measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Summary of Previous Monitoring

The SGRLPS complied with the mitigation and monitoring required under the previous authorization for the 2010 season. In compliance with the 2010 IHA, the SGRLPS submitted a final report on the activities at the Station, covering the period of January 27, 2010 through April 30, 2010. During the effective dates of the 2010 IHA, the SGRLPS conducted two sessions of aircraft operations and restoration activities on NWSR which did not exceed the activity levels analyzed under the 2010 authorization. The 2010 IHA required that the SGRLPS conduct a pre-restoration and post-restoration aerial survey of all marine mammals hauled-out on NWSR for each session.

On February 26, 2010, the SGRLPS' photographed the haulout areas on the initial approach to NWSR. During the approach, the photographer observed no animals hauled out on NWSR. The SGRLPS observed no animals hauled on NWSR during the two-day restoration session and no pinnipeds were present during the helicopter's February 28th departure flight to the mainland.

On April 9, 2010, the SGRLPS' photographed the haulout areas on the initial approach to NWSR. Similar to the February session, the photographer observed no animals hauled out on NWSR during approach. The SGRLPS observed no animals hauled on NWSR during the three-day restoration session and no pinnipeds were present during the helicopter's April 11th departure flight to the mainland.

The SGRLPS observed no animals hauled on NWSR during the entirety of each session. As there were no observed impacts to pinnipeds from these activities, NMFS was unable to assess

the effectiveness of mitigation measures for helicopter approaches set forth in the 2010 IHA. However, the 2010 IHA restricted SGRLP's access to NWSR during the pupping season, thus effecting the least practical adverse impact on the species or stock. These results did not refute NMFS' original findings.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

At least once during the period between February 18, 2011, through April 30, 2011, or during the period of November 1, 2011, through December 31, 2011 a qualified biologist shall be present during all three workdays at the Station. The biologist hired will be subject to approval of NMFS. This requirement may be modified depending on the results of the second year of monitoring.

The qualified biologist shall document use of the island by the pinnipeds (*i.e.,* frequency, dates, time, tidal height, species, numbers present, and any disturbances) and note any responses to potential disturbances. In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup, the SGRLPS will notify the NMFS' SWRO Administrator and the NMFS' Director of the Office of Protected Resources immediately.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. Aerial photo coverage of the island shall be completed from the same helicopter used to transport the SGRLPS personnel to the island during restoration trips. Photographs of all marine mammals hauled out on the island shall be taken at an altitude greater than 300 m (984 ft) by a skilled photographer, prior to the first landing on each visit included in the monitoring program. Photographic documentation of marine mammals present at the end of each three-day work session shall also be made for a before and after comparison. Data shall be provided to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (*see* Reporting). The original photographs can be made available to NMFS or other marine mammal experts for inspection and further analysis.

Reporting

The SGRLPS personnel will record data to document the number of marine mammals exposed to helicopter noise and to document apparent disturbance reactions or lack thereof. SGRLPS and NMFS will use the data to estimate numbers of animals potentially taken by Level B harassment.

Interim Monitoring Report

The SGRLPS will submit interim monitoring reports to the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources no later than 30 days after the conclusion of each monthly session. The interim report will describe the operations that were conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring.

Each interim report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Final Monitoring Report

In addition to the interim reports, the SGRLPS will submit a draft Final Monitoring Report to NMFS no later than 90 days after the project is completed to the Regional Administrator and the Director of Office of Protected Resources at NMFS Headquarters. Within 30 days after receiving comments from NMFS on the draft Final Monitoring Report, the SGRLPS must submit a Final Monitoring Report to the Regional Administrator and the NMFS Director of Office of Protected Resources. If the SGRLPS receives no comments from NMFS on the draft Final Monitoring Report, the draft Final Monitoring Report will be considered to be the Final Monitoring Report.

The final report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and authorized as a result of the helicopter operations and restoration and maintenance activities on NWSR.

Based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), NMFS estimates that approximately 204 California sea lions (calculated by multiplying the average monthly abundance of California sea lions (zero in April, 1997 and 34 in April,1998) present on NWSR by six months of the proposed restoration and maintenance activities), 172 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR with a 95-percent confidence interval), 36 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by six months), and 6 northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1)

by six months) could be potentially affected by Level B behavioral harassment over the course of the proposed IHA. Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hrs of aircraft operations during the course of the proposed activity. These incidental harassment take numbers represent approximately 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal.

All of the potential takes are expected to be Level B behavioral harassment only. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area, no injury or mortality to pinnipeds is expected or requested.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers:

(1) The number of anticipated mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, and intensity, and duration of Level B harassment; and

(4) The context in which the takes occur.

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No takes by Level A harassment, serious injury, or mortality are anticipated to occur as a result of the SGRLPS' proposed activities, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the proposed activities; the availability of alternate areas near NWSR for marine mammals to avoid the resultant acoustic disturbance; and limited access to NWSR during the pupping season. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the SGRLPS' helicopter operations and restoration/maintenance activities, would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the helicopter operations and restoration/maintenance activities would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Steller sea lion, eastern Distinct Population Segment is listed as threatened under the ESA and occurs in the action area. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA with the Southwest Region, NMFS. On January 27, 2010, the Southwest Region issued a BiOp and concluded that the issuance of IHAs are likely to adversely affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has designated critical habitat for the eastern Distinct Population Segment of Steller sea lions in California at Año Nuevo Island, Southeast Farallon Island, Sugarloaf Island and Cape Mendocino, California pursuant to section 4 of the ESA (*see* 50 CFR 226.202(b)). Northwest Seal Rock is neither within nor nearby these designated areas. Finally, the BiOp included an ITS for Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take. NMFS has reviewed the 2010 BiOp and determined that there is no new information regarding effects to Steller sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the 2010–2012 ITS. Therefore, the proposed IHA does not require the reinitiation of section 7 consultation under the ESA.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to the SGRLPS, NMFS prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. The EA, titled "Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California," evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, NMFS concluded that issuance of an IHA November 1 through April 30, annually would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the SGRLPS' activities. In conjunction with the SGRLPS' 2011 application, NMFS has again reviewed the 2010 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA. NMFS, therefore, reaffirms the 2010 FONSI. A copy of the EA and the FONSI for this activity is available upon request (*see* **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the specific helicopter operations and restoration activities described in this notice and in the IHA request in the specific geographic region in the northwestern Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to the SGRLPS to conduct helicopter operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast

Pacific Ocean from the period of February 18, 2011, through April 30, 2011, or during the period of November 1, 2011, through December 31, 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Dated: February 16, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–4291 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 110207099–1099–01]

RIN 0660–XA23

Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The United States Department of Commerce's National Telecommunications and Information Administration (NTIA) remains committed to preserving a stable and secure Internet Domain Name System (DNS). Critical to the DNS is the continued performance of the Internet Assigned Numbers Authority (IANA) functions. The IANA functions have historically included: (1) The coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with Internet DNS root zone management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the .ARPA and .INT top-level domains. The Internet Corporation for Assigned Names and Numbers (ICANN) currently performs the IANA functions, on behalf of the United States Government, through a contract with NTIA. Given the September 30, 2011 expiration of this contract, NTIA is seeking public comment to enhance the performance of the IANA functions in the development and award of a new IANA functions contract.

DATES: Comments are due on or before March 31, 2011.

ADDRESSES: Written comments may be submitted by mail to Fiona M. Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4701, Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *IANAFunctions@ntia.doc.gov.* Comments provided via electronic mail should also be submitted in one or more of the formats specified above. Comments will be posted to NTIA's Web site at *http://www.ntia.doc.gov/ntiahome/domainname/IANAFunctions.html.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Vernita D. Harris, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4701, Washington, DC 20230; *telephone:* (202) 482–4686; *e-mail: vharris@ntia.doc.gov.* Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: The Internet Assigned Numbers Authority (IANA) functions were initially performed under a series of contracts between the Department of Defense's Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Terranode Network Technology (TNT). As the TNT project and the DARPA/USC contract neared completion, the United States Government recognized the need for the continued performance of the IANA functions as vital to the stability and correct functioning of the Internet. In January 1999, NTIA initiated a procurement process to fulfill this need.[1] NTIA awarded the IANA functions contract to ICANN in February 2000, and subsequently in March 2001, March 2004, and August 2005.[2] The current contract expires September 30, 2011.[3] Given this impending expiration, NTIA is issuing this Notice of Inquiry (NOI) to seek public comment to inform the procurement process, leading to the award of a new IANA functions contract. We take this opportunity to ask a detailed set of questions on this topic as this is the first time NTIA has undertaken a comprehensive review of the IANA functions contract since the award of the first contract in 2000.

The domain name system (DNS) is a critical component of the Internet that works like an address book, allowing users to reach websites using easy-to-understand domain names (*e.g., http://commerce.gov*) rather than the numeric network server addresses (*e.g., http://170.110.225.168*) necessary to retrieve information on the Internet. It is a hierarchical and globally distributed system in which distinct servers maintain the detailed information for their local domains and pointers for how to navigate the hierarchy to retrieve information from other domains. The accuracy, integrity, and availability of the information supplied by the DNS are essential to the operation of most systems, services, or applications that use the Internet.

Essential to the DNS is the performance of the IANA functions. At a summary level, the IANA functions include: (1) The coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with Internet DNS root zone management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the .ARPA and .INT top-level domains. A more detailed description of each of the IANA functions follows.

The first of the IANA functions is the coordination of the assignment of technical protocol parameters. This function includes the review and assignment of unique values to numerous parameters (*e.g.,* operation codes, port numbers, object identifiers, protocol numbers) used in various Internet protocols. This function also includes dissemination of listings of assigned parameters through various means (including on-line publication) and the review of technical documents for consistency with assigned values.

[1] To assist in this transition from the DARPA contract with USC to ICANN, in 1998, ICANN entered into an agreement with the University of Southern California Information Sciences Institute (USC/ISI) to transition certain functions, responsibilities, assets, and personnel to ICANN.

[2] Each contract and modifications are available at *http://www.ntia.doc.gov/ntiahome/domainname/iana.htm.*

[3] The current contract has an option to extend the performance period for an additional six months. If necessary, NTIA will exercise this option in order to complete the contract procurement process. *See* Contract Clause 1.5 of the current contract, which can be viewed at *http://www.ntia.doc.gov/ntiahome/domainname/iana/ianacontract_081406.pdf.*

The second function is the administration of certain responsibilities associated with Internet DNS root zone management. It includes receiving requests for and making routine updates of the top-level domain contact, nameserver and DS record information. This function also includes receiving delegation and redelegation requests, investigating the circumstances pertinent to those requests, and making recommendations and reporting actions undertaken in connection with processing requests.[4] Additionally, this function involves certain responsibilities related to DNSSEC operation at the root, including management of the root zone Key Signing Key (KSK).[5]

The third function involves responsibilities for allocated and unallocated IPv4 and IPv6 address space and Autonomous System Number (ASN) space, including the delegation of IP address blocks to Regional Internet Registries (RIRs) for routine allocation. This function also includes reservation and direct allocation of space for special purposes, such as multicast addressing, addresses for private networks and globally specified applications.

Other services related to the performance of the IANA functions include the management of .ARPA and .INT top-level domains.

The responsibilities encompassed within the IANA functions require cooperation and coordination with a variety of technical groups and stakeholder communities. For example, protocol parameters are developed through and overseen by groups such as the Internet Engineering Task Force (IETF) and the Internet Architecture Board (IAB), policies and procedures associated with Internet DNS root zone management are developed by a variety of actors (*e.g.,* the Internet technical community, ccTLD operators, and governments) and continue to evolve, and policies and procedures related to Internet numbering resources are developed within the RIRs. NTIA is cognizant and respectful of the policy and technical standards development roles these organizations, their constituencies, and other relevant Internet community stakeholders play.

NTIA recognizes that the IANA Functions Operator, in the performance of its duties, requires close constructive working relationships with interested and affected parties if it is to ensure quality performance of the IANA functions. Applicable to each of these functions and their performance are relevant policies, technical standards, and procedures developed and administered outside the purview of the IANA functions contract.

Given the importance of the Internet as a global medium supporting economic growth and innovation, continuing to preserve the security and stability of the Internet DNS remains a top priority for NTIA. This is a shared responsibility among all stakeholders in the Internet community. Currently, the IANA Functions Operator is required to operate computing and communications systems in accordance with best business and security practices. This includes utilizing authenticated communications between it and its customers. The IANA Functions Operator is also required to submit annually an IANA functions information security plan. The annual plan addresses controls that the IANA Functions Operator has employed to ensure the confidentiality, integrity and availability of the IANA functions processes and information assets. Additionally, the IANA Functions Operator is required to submit monthly performance reports. The monthly reports contain statistical and narrative information on the performance of the IANA functions (i.e., assignment of technical protocol parameters; administrative functions associated with root zone management; and allocation of internet numbering resources) for the previous 30 days.[6]

Request for Comment: The current IANA functions contract will expire on September 30, 2011. Given the impending expiration of this contract, NTIA is seeking public comment to enhance the performance of the IANA functions. These comments will be considered in the procurement process to award a new IANA functions contract.

Comments that contain references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments.

1. The IANA functions have been viewed historically as a set of interdependent technical functions and accordingly performed together by a single entity. In light of technology changes and market developments, should the IANA functions continue to be treated as interdependent? For example, does the coordination of the assignment of technical protocol parameters need to be done by the same entity that administers certain responsibilities associated with root zone management? Please provide specific information to support why or why not, taking into account security and stability issues.

2. The performance of the IANA functions often relies upon the policies and procedures developed by a variety of entities within the Internet technical community such as the IETF, the RIRs and ccTLD operators. Should the IANA functions contract include references to these entities, the policies they develop and instructions that the contractor follow the policies? Please provide specific information as to why or why not. If yes, please provide language you believe accurately captures these relationships.

3. Cognizant of concerns previously raised by some governments and ccTLD operators and the need to ensure the stability of and security of the DNS, are there changes that could be made to how root zone management requests for ccTLDs are processed? Please provide specific information as to why or why not. If yes, please provide specific suggestions.

4. Broad performance metrics and reporting are currently required under the contract.[7] Are the current metrics and reporting requirements sufficient? Please provide specific information as to why or why not. If not, what specific changes should be made?

5. Can process improvements or performance enhancements be made to

[4] Performance of this function in relation to country code top level domains (ccTLDs) has evolved over time to address specific issues, one of which has been how best to respect the legitimate interests of governments in the management of their respective ccTLD within the current model.

[5] At present, the process flow for root zone management (see diagram at *http://www.ntia.doc.gov/DNS/CurrentProcessFlow.pdf*) involves three roles that are performed by different entities through two separate legal agreements with NTIA. The process itself includes the following steps: (1) TLD operators submit change requests to the IANA Functions Operator; (2) the IANA Functions Operator processes the request and conducts due diligence in verifying the request; (3) the IANA Functions Operator sends a recommendation regarding the request to the Administrator for verification/authorization; (4) the Administrator verifies that the IANA Functions Operator has followed its agreed upon verification/processing policies and procedures; (5) the Administrator authorizes the Root Zone Maintainer to make the change; (6) the Root Zone Maintainer edits and generates the updated root zone file; and (7) the Root Zone Maintainer distributes the updated root zone file to the thirteen (13) root server operators. Currently, ICANN performs the role of the IANA Functions Operator, NTIA performs the role of Administrator, and VeriSign performs the role of Root Zone Maintainer. NTIA's agreements with ICANN (IANA functions contract) and VeriSign, Inc. (Cooperative Agreement) provide the process through which changes are currently made to the authoritative root zone file.

[6] For reports on IANA functions activities *see: http://www.iana.org/reports* and *https://charts.icann.org/public/index-iana-main.html.*

[7] *See* Appendix A and Appendix B of the current contract, which can be viewed at *http://www.ntia.doc.gov/ntiahome/domainname/iana/ianacontract_081406.pdf.*

the IANA functions contract to better reflect the needs of users of the IANA functions to improve the overall customer experience? Should mechanisms be employed to provide formalized user input and/or feedback, outreach and coordination with the users of the IANA functions? Is additional information related to the performance and administration of the IANA functions needed in the interest of more transparency? Please provide specific information as to why or why not. If yes, please provide specific suggestions.

6. Should additional security considerations and/or enhancements be factored into requirements for the performance of the IANA functions? Please provide specific information as to why or why not. If additional security considerations should be included, please provide specific suggestions.

Dated: February 22, 2011.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2011–4240 Filed 2–24–11; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities and to delete services previously furnished by such agencies.

Comments Must Be Received on or Before: 3/28/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Custodial Service, U.S. Coast Guard Yard—Curtis Bay, Baltimore, MD.
NPA: Melwood Horticultural Training Center, Upper Marlboro, MD.
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, ELC, Baltimore, MD.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Dispatcher, Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, FL.
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, FL.
Contracting Activity: Department of Veterans Affairs.
Service Type/Location: Grounds Maintenance, Waco Distribution Center, 1801 Exchange Park, Waco, TX.
NPA: Statewide Consolidated Community Development Corporation, Inc., Beaumont, TX.
Contracting Activity: AAFES–Army & Air Force Exchange Service, Dallas, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–4245 Filed 2–24–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 2, 2011; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 22, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–4400 Filed 2–23–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Notice of Intent To Prepare an Environmental Impact Statement for the Modernization and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex in Alaska

AGENCY: U.S. Air Force, U.S. Army.

ACTION: Notification of Extension of Scoping Period.

SUMMARY: The U.S. Air Force and U.S. Army, on behalf of Alaskan Command (ALCOM), are issuing this notice to advise the public of the extension to submit scoping comments. The initial Notice of Intent published in the **Federal Register** on December 8, 2010 (**Federal Register** Vol. 75, No. 235, 76444), requested scoping comments no later than February 4, 2011. The Air Force and Army have extended the deadline for submitting scoping comments to March 4, 2011. All are encouraged to provide comments on the proposed actions either by mail, postmarked or electronically submitted no later than March 4, 2011, to ensure consideration in the draft EIS. All comments received during this scoping period will be considered in the preparation of the draft EIS.

Point of Contact: Please direct any written comments or requests for information to ALCOM Public Affairs, 9480 Pease Avenue, Suite 120, JBER, AK 99506, Phone: 907–552–2341, Fax: 907–552–5411 or submit them electronically at *http://www.jparceis.com.* You may also request handicap assistance or translation services for the public scoping meetings in advance through the ALCOM Public Affairs Office.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–4220 Filed 2–24–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of a Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report for the Sacramento River Deep Water Ship Channel

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE) and the Port of West Sacramento (Port) propose to reinitiate the previously authorized deepening from −30 feet mean lower low water (MLLW) to −35 feet MLLW and selective widening of the Sacramento River Deep Water Ship Channel (SRDWSC). This project was partially completed in 1990, but was suspended due to lack of funding. The USACE is the lead agency for this project under the National Environmental Policy Act (NEPA). The Port is the lead agency for this project under the California Environmental Quality Act (CEQA).

DATES: *Submit comments by:* April 11, 2011.

ADDRESSES: Written comments about the SRDWSC Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) can be addressed to: Bill Brostoff, U.S. Army Corps of Engineers, San Francisco District, 1455 Market Street, 15th Floor, ET–PA, San Francisco, CA 94103; *spnetpa@usace.army.mil;* 415–503–6867.

FOR FURTHER INFORMATION CONTACT: Bill Brostoff or Fari Tabatabai, U.S. Army Corps of Engineers, San Francisco District, 1455 Market Street, 15th Floor, ET–PA, San Francisco, CA 94103; *spnetpa@usace.army.mil;* 415–503–6867 or 415–503–6860.

SUPPLEMENTARY INFORMATION: The SRDWSC was originally constructed in 1963 to a depth of 30 feet. In 1969, Congress authorized studying deepening the channel from −30 to −35 feet MLLW. In support of this effort, USACE completed the *Sacramento River Deep Water Ship Channel, California: Feasibility Report and Environmental Impact Statement for Navigation and Related Purposes* in 1980, and a *General Design Memorandum and Final Supplemental Environmental Impact Statement* in 1986. River miles (RMs) 35.0 to 43.4 of the SRDWSC were deepened to −35 feet MLLW in 1989; however, work was suspended in 1990 due to funding constraints and now-resolved issues pertaining to utility relocations.

The purpose of the Channel Deepening to −35 Feet MLLW and Selective Widening Alternative (Proposed Project) is to resume deepening of the SRDWSC to its congressionally authorized depth to realize increased economic benefits associated with a reduced transportation cost of moving goods to the Port, and provide safe navigation for commercial marine traffic. Currently, vessels traveling to the Port laden with some commodity types must "light-load" (travel less than fully loaded with the desired amount of cargo) to navigate the SRDWSC with sufficient under-keel clearance. In addition, the existing widths of sections of the SRDWSC can make navigating to the Port difficult, particularly in inclement weather. The Proposed Project, therefore, involves both deepening the SRDWSC to a depth of 35 feet from RMs 0.0 to 35.0 and widening in selective areas within that stretch of channel, thus completing the construction suspended in 1990. It also includes maintenance dredging from RMs 35.0 to 43.4 to return that previously constructed portion of the channel to its 35-foot depth. The total volume of dredged material is estimated to be approximately 10 million cubic yards (cy) including a 2-foot overdepth. An extensive search was conducted of beneficial use opportunities in California's Sacramento-San Joaquin River Delta identifying a wide array of potential placement sites. The Proposed Project involves ten upland dredged material placement sites selected to either permanently accommodate or temporarily stockpile dredged material for later beneficial use.

Alternatives involving dredging and non-dredging were considered. Non-dredging alternatives included intermodal transportation (*i.e.,* using rail or truck), use of Lighter Aboard Ship (LASH; i.e., transferring material to barges), and constructing locks. These alternatives were eliminated from detailed analysis because their costs were too high (intermodal, locks) or facilities were not available (LASH).

The SRDWSC SEIS/SEIR analyzes the following three alternatives: (1) Future without Project Conditions (or the No Action/No Project Alternative); (2) Channel Deepening to −35 Feet MLLW and Selective Widening Alternative (Proposed Project); and (3) Channel Deepening to −33 Feet MLLW and Selective Widening Alternative (−33 Feet MLLW Alternative). Future without Project Conditions consists of a continuation of present shipping and channel maintenance practices and estimated physical, biological, and human environmental conditions likely to be present over the next 50 years with no improvements to the SRDWSC other than normal channel maintenance. The −33 Feet MLLW Alternative would result in total dredged material volume of 5.2 million cy with a 2-foot overdepth.

A public meeting will be held on Monday, March 21, 2011, from 5 to 7 p.m. at the West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, CA 95691. The SRDWSC SEIS/SEIR is available for review at *http://www.sacramentoshipchannel.org.* Copies of the document are also available for review during normal business hours at:

(1) Port of West Sacramento—1110 West Capitol Ave, 1st Floor, West Sacramento, CA 95691.

(2) Rio Vista Library—44 South Second Street, Rio Vista, CA 94571.

(3) USACE San Francisco District—1455 Market Street, San Francisco, CA 94103.

(4) Peter J. Shields Library (University of California, Davis)—100 Northwest Quad, Davis, CA 95616.

(5) San Francisco's Main Library—101 Larkin Street, San Francisco, CA 94102.

(6) Sacramento's Central Library—828 I Street, Sacramento, CA 95814.

(7) Isleton Library—Isleton Elementary School, 415 Union Street, Isleton, CA 95641.

(8) Arthur F. Turner Community Library (West Sacramento)—1212 Merkley Avenue, West Sacramento, CA 95691.

Dated: February 15, 2011.

Torrey A. DiCiro,

Lieutenant Colonel, U.S. Army, Commanding.

[FR Doc. 2011–4239 Filed 2–24–11; 8:45 am]

BILLING CODE 3720–58–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 March 28, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 22, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of the Secretary

Type of Review: Extension.

Title of Collection: Education Department General Administration Regulation (EDGAR) Recordkeeping and Reporting Requirements.

OMB Control Number: 1894–0009.

Agency Form Number(s): N/A.

Frequency of Responses: As needed/required.

Affected Public: Business and other for-profits; individuals or households; not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 9,174.

Total Estimated Annual Burden Hours: 42,828.

Abstract: The Education Department General Administrative Regulations (EDGAR) contains several requirements that grantees maintain certain types of records related to their grants and to report or submit certain information to the Department. Part 74 of EDGAR applies to Institutions of Higher Education, nonprofit organizations, and hospitals. Additionally, under 34 CFR 75.261, all types of grantees including State Educational Agencies, Local Educational Agencies, and Federally Recognized Indian Tribal Governments may follow the regulations in 34 CFR 74.25 (e)(2) regarding extension of a project period. Section 74.25 (e)(2) allows grantees to initiate a one-time extension of their projects' expiration date of up to 12 months without prior approval from the Department of Education. These grantee requirements are necessary for the effective administration and monitoring of grant projects.

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 4467. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–4253 Filed 2–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 26, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically

mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. 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 Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 22, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Conversion Magnet Schools Evaluation Revision

OMB Control Number: 1850–0832.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Not-for-profit institutions

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 280.

Abstract: The Conversion Magnet Schools Evaluation is being conducted to determine if efforts to turn around low-performing schools through converting to a Magnet Schools Assistance Program supported magnet school are associated with improved student achievement and the reduction in minority group isolation. The Institute of Education Sciences, in collaboration with the Office of Innovation and Improvement, initiated the study due to the popularity and persistence of magnet programs and the inconclusive research on the relationship of these programs to important student outcomes. The study will use quasi-experimental designs to explore the relationship between magnet programs and student achievement both for "resident" students who attend magnet schools as their neighborhood schools and, if possible, for non-resident students. Data collection includes student records data, principal surveys, and project director interviews. The U.S. Department of Education has commissioned American Institutes for Research to conduct this study.

An Office of Management and Budget (OMB) clearance request that (1) described the study design and full data collection activities and (2) requested approval for the burden associated with the first three years of data collection was approved in 2007 (OMB Number 1850–0832 approval 7/13/07; expiration 7/31/10). In 2010, we requested clearance for the burden associated with the fourth and fifth year of data collection necessary for the rigorous comparative interrupted time series design including student records data collection for the 2009–2010 school year (OMB Number 1850–0832 approval 6/14/10; expiration 6/30/13). We are now requesting clearance for the burden associated with one additional round of student records data collection (student records data from the 2010–2011 school year) from participating districts due to the later than expected implementation of the magnet programs in the 2007 grantee cohort.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4516. 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 *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–4254 Filed 2–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC–Like Waste, and Notice of Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of its Draft *Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC–Like Waste* (EIS–0375D, Draft EIS) for public review and comment. The Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985 makes the Federal Government responsible for the disposal of GTCC low-level radioactive waste (LLRW) that results from Nuclear Regulatory Commission (NRC) and Agreement State licensed activities. DOE is the Federal agency responsible for the disposal of GTCC LLRW. In addition to GTCC LLRW, this Draft EIS also addresses DOE generated or -owned LLRW and potential non-defense-generated transuranic radioactive waste having characteristics similar to GTCC LLRW (referred to herein as "GTCC-like" waste) and for which there may be no path to disposal.

DOE prepared this Draft EIS in accordance with the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) for implementing the National Environmental Policy Act (NEPA), and DOE's NEPA Implementing Procedures (10 CFR Part 1021). The Draft EIS evaluates the potential human health and environmental impacts of alternatives for disposing of an estimated 12,000 cubic meters (m^3) of waste, containing approximately 160 million curies of radioactivity. This includes GTCC LLRW as defined by the NRC in 10 CFR 72.3, *i.e.,* "low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55," as well as GTCC-like waste.

DOE proposes to construct and operate a new facility or facilities, or use an existing facility or facilities, for the disposal of GTCC LLRW and GTCC-like waste. The Draft EIS evaluates alternative methods for disposal of these wastes at the following alternative locations: the Hanford Site in Washington; the Idaho National Laboratory in Idaho; at and near the Waste Isolation Pilot Plant in New Mexico; the Los Alamos National Laboratory in New Mexico; the Nevada

National Security Site (formerly known as the Nevada Test Site) in Nevada; and the Savannah River Site in South Carolina. The Draft EIS also evaluates generic commercial disposal sites in four regions of the U.S., and a "No Action Alternative" as required under NEPA. The U.S. Environmental Protection Agency is a cooperating agency in the preparation of this EIS.

DATES: DOE invites the public to submit oral and/or written comments on this Draft EIS during the public comment period, which extends through June 27, 2011. DOE will consider all comments received or postmarked by that date in preparing the Final EIS, and will consider late comments to the extent practicable. DOE will hold public hearings on the dates, times, and locations listed under **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Written comments on the Draft EIS may be submitted by U.S. mail to the following address: Mr. Arnold M. Edelman, EIS Document Manager, U.S. Department of Energy, GTCC EIS, Cloverleaf Building, EM–43, 1000 Independence Avenue, SW, Washington, DC 20585. Comments may also be submitted electronically via the GTCC EIS Web site at *http://www.gtcceis.anl.gov,* where the Draft EIS can be found, or by electronic mail to *gtcceis@anl.gov.* The Draft EIS is also available on DOE's NEPA Web site at *http://nepa.energy.gov/draft_environmental_impact_statements.htm.*

FOR FURTHER INFORMATION CONTACT: For further information about this Draft EIS, please contact Mr. Edelman at the mailing address or via the GTCC EIS Web site listed above. For information regarding the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Section 3(b)(1)(D) of the LLRWPAA assigned the Federal government responsibility for the disposal of GTCC LLRW that results from activities conducted under NRC and Agreement State licenses. The LLRWPAA also specified in Section 3(b)(2) that such waste be disposed of in a facility licensed by NRC. DOE is the Federal agency responsible for the disposal of GTCC LLRW. NRC, in 10 CFR 72.3, defines GTCC waste as LLRW that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

This Draft EIS evaluates the range of reasonable alternatives for disposal of GTCC LLRW. It also evaluates alternatives for the disposal of LLRW and potential non-defense-generated transuranic radioactive waste generated or owned by DOE, which has characteristics similar to GTCC LLRW, and for which there may be no path to disposal. For the purposes of this Draft EIS, DOE is referring to this waste as GTCC-like waste. The NRC LLRW waste classification system in 10 CFR 61.55 does not apply to radioactive waste generated or owned by DOE and disposed of in DOE facilities. DOE evaluates GTCC-like waste in the Draft EIS because common approaches may be used to dispose of both GTCC LLRW and GTCC-like waste.

DOE's proposed action is to construct and operate a new facility or facilities, or use an existing facility or facilities, for the disposal of GTCC LLRW and GTCC-like waste. Accordingly, the Draft EIS evaluates the potential environmental impacts associated with the proposed construction, operation, and performance of a facility or facilities for the disposal of GTCC LLRW and GTCC-like waste.

Types and Estimated Quantities of GTCC LLRW and GTCC-Like Wastes

The total inventory volume of GTCC LLRW and GTCC-like waste evaluated in the Draft EIS is about 12,000 m^3, and is estimated to contain approximately 160 million curies of radioactivity. Of this total, approximately 3,000 m^3 and less than one million curies are estimated to be GTCC-like waste. Approximately ten percent of the total estimated inventory volume of GTCC LLRW and GTCC-like waste is currently in storage, while approximately 90 percent is expected to be generated in the future.

GTCC LLRW and GTCC-like waste, for purposes of the Draft EIS, are categorized into three waste types: activated metal, sealed sources, or Other Waste. Activated metal wastes are largely generated from the decommissioning of nuclear reactors. They include portions of the nuclear reactor vessel, such as the core shroud and core support plate. Activated Metal wastes represent approximately 17 percent of the total inventory volume and approximately 98 percent of the radioactivity from GTCC LLRW and GTCC-like waste. There are 104 operating commercial reactors in the U.S., an additional 18 that have been closed or decommissioned, and an estimated 33 new commercial reactors that may be constructed in the future. Most of the Activated Metal waste will not be generated for several decades, when the majority of the currently operating reactors are scheduled to undergo decommissioning.

Sealed Sources are widely used for medical purposes, such as in equipment to diagnose and treat illnesses (particularly cancer), sterilize medical devices, and irradiate blood for transplant patients; and for industrial purposes, such as nondestructive testing of structures and industrial equipment and exploration of geologic formations for oil and gas. They are located in hospitals, universities, and industries throughout the U.S. Sealed sources represent approximately 25 percent of the total inventory volume and approximately one percent of the total radioactivity from GTCC LLRW and GTCC-like waste.

Other Waste primarily includes contaminated equipment, debris, scrap metal, and decommissioning waste such as waste from the production of molybdenum-99, which is used in about 16 million medical procedures (*e.g.,* to detect cancer) each year; the production of radioisotope power systems in support of space exploration and national security; and the environmental cleanup of the West Valley Site in New York (a former commercial facility for reprocessing of spent nuclear fuel from nuclear power reactors). Other Waste represents approximately 58 percent of the total inventory volume and approximately one percent of the radioactivity from GTCC and GTCC-like wastes.

Disposal Alternatives Evaluated

The Draft EIS evaluates the range of reasonable alternatives for the disposal of GTCC LLRW and GTCC-like waste including:

1. Disposal in the WIPP geologic repository in New Mexico;

2. Disposal in a new borehole disposal facility at the Hanford Site in Washington, the Idaho National Laboratory in Idaho, the Los Alamos National Laboratory and WIPP Vicinity in New Mexico, and the Nevada National Security Site (formerly known as the Nevada Test Site) in Nevada; and

3. Disposal in a new trench or vault disposal facility at the same sites identified in item 2 above and at the Savannah River Site in South Carolina.

The Draft EIS also evaluates the potential environmental impacts of using a facility or facilities at generic commercial disposal sites in four regions of the U.S., should one or more commercial facilities be proposed in the future. In addition, the Draft EIS

analyzes the No Action Alternative, as required by NEPA.

Alternatives Considered but Not Evaluated

DOE's Notice of Intent (NOI) for this EIS (72 FR 40135, July 23, 2007) identified Yucca Mountain in Nevada and the Oak Ridge Reservation (ORR) in Tennessee as locations to be evaluated for the potential disposal of GTCC wastes. DOE did not evaluate a repository at Yucca Mountain as an alternative in this Draft EIS because, since publication of the NOI, the Department determined that developing a permanent repository for high-level waste and spent nuclear fuel at Yucca Mountain is not a workable option and that the project should be terminated. Creating a disposal site at Yucca Mountain only for GTCC waste is not a reasonable alternative. Therefore, disposal of GTCC LLRW and GTCC-like waste at Yucca Mountain is no longer a reasonable alternative. The Draft EIS also does not evaluate disposal of this waste at ORR. Reviews conducted by DOE's Low-Level Waste Disposal Facility Federal Review Group determined that the site is not appropriate for disposal of LLRW containing high concentrations of long-lived radionuclides such as those found in GTCC wastes.

Preferred Alternative

DOE does not have a preferred alternative for the disposal of GTCC and GTCC-like waste, but does identify factors that DOE plans to consider in developing a preferred alternative or alternatives for inclusion in the Final EIS. These factors are discussed in the Summary and Chapter 2 of the Draft EIS and include waste type characteristics (*e.g.,* radionuclide inventory and waste form stability), disposal method considerations (*e.g.,* protection of an inadvertent intruder and operational experience), and disposal location considerations (*e.g.,* potential human health impacts, tribal concerns, laws and other requirements). The preferred alternative could be a combination of two or more alternatives, which could include the No Action Alternative for a portion of the waste. DOE invites public comments on these factors and any additional factors that should be considered in the selection of a preferred alternative and why.

Public Hearings

DOE invites the public to present oral and/or written comments during public hearings on the Draft EIS. Participants may register to speak at the hearing or via the GTCC Web site. Speakers will be recognized in order as registered. Speakers may be asked to limit their oral comments to a certain time limit to be decided at the beginning of each of the public hearings based on the number of registered speakers. Speakers may be given an opportunity to take the floor a second time after all those who wish to speak have been given an opportunity to do so. During the first hour, the public may review informational materials provided by DOE and speak informally with DOE representatives. This will be followed by the formal hearing, which will be opened with a brief DOE presentation about the Draft EIS and a review of the hearing procedures. A court reporter will record all oral comments, which later will be publicly available. In addition to the dates, times, and locations of all the hearings listed below, further information about the hearings will also be available on the GTCC Web site and provided in local print media seven days in advance of the hearing.

Public hearings will be held at the following locations:

South Carolina

North Augusta Community Center, 495 Brookside Avenue, North Augusta, SC 29841, April 19, 2011, 5:30 p.m.–9:30 p.m.

New Mexico

Pecos River Village Conference Center, Carousel House, 711 Muscatel Avenue, Carlsbad, NM 88220, April 26, 2011, 5:30 p.m.–9:30 p.m.

Marriott Pyramid North, 5151 San Francisco Road NE., Albuquerque, NM, April 27, 2011, 5:30 p.m.–9:30 p.m.

Cities of Gold Hotel Conference Center, 10–B Cities of Gold Road, Santa Fe, NM 87506, April 28, 2011, 5:30 p.m.–9:30 p.m.

Nevada

Desert Research Institute—Frank Rodgers Building, 755 C. East Flamingo Road, Las Vegas, NV 89119, May 9, 2011, 5:30 p.m.–9:30 p.m.

Idaho

Shiloh Inn Suites Hotel, 780 Lindsay Boulevard, Idaho Falls, ID 83402, May 11, 2011, 5:30 p.m.–9:30 p.m.

Washington

Red Lion Hotel, 2525 N. 20th Avenue, Pasco, WA 99301, May 17, 2011, 5:30 p.m.–9:30 p.m.

Oregon

Doubletree Hotel, 1000 NE Multnomah Street, Portland, OR 97232, May 19, 2011, 5:30 p.m.–9:30 p.m.

Washington, DC

Hilton Garden Inn, 815 14th Street NW., Washington, DC 20005, May 25, 2011, 1 p.m.–5 p.m.

Public Reading Rooms and Libraries

Copies of the Draft EIS are available for public review at the locations listed below:

District of Columbia

U.S. Department of Energy, Freedom of Information Act Public Reading Room, 1000 Independence Avenue, SW., Room 1G–033, Washington, DC 20585, (202) 586–5955.

Idaho

University Place, TAB Building, U.S. Department of Energy Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83401, (208) 526–0833.

Nevada

Nevada Site Office, U.S. Department of Energy, Public Reading Room, 755 East Flamingo Road, Room 103, Las Vegas, NV 89119, (702) 794–5106.

Amargosa Valley Library, 829 E. Farm Road, HCR 69 Box 401–T, Amargosa, NV 89020, (775) 372–5340.

Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89119, (702) 507–3400.

Indian Springs Library, 715 Gretta Lane, P.O. Box 629, Indian Springs, NV 89018, (702) 879–3845.

Las Vegas Library, 833 N. Las Vegas Boulevard, Las Vegas, NV 89101, (702) 507–3500.

Pahrump Community Library, 701 S. East Street, Pahrump, NV 89048, (775) 727–5930.

Tonopah Public Library, 167 S. Central Street, Tonopah, NV 89049, (775) 482–3374.

New Mexico

DOE FOIA Reading Room, Government Information/Zimmerman Library, University of New Mexico, MSC05 3020, 1 University of New Mexico, Albuquerque, NM 87131–0001, (505) 277–7180.

Carlsbad Field Office, U.S. Department of Energy, WIPP Information Center, 4021 National Parks Highway, Carlsbad, NM 88220, (575) 234–7348 or (800) 336–9477.

Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, NM 88220, (575) 885–6776.

Eunice Public Library, 1039 10th Street, Eunice, NM 88231, (575) 394–2336.

Española Public Library, 313 N Paseo de Oñate, Española, NM 87532, (505) 747–6087.

Mesa Public Library, 2400 Central Avenue, Los Alamos, NM 87544, (505) 662–8250.

Santa Fe Public Library, 145 Washington Street, Santa Fe, NM 87501, (505) 955–6780.

Santa Fe Public Library, Oliver La Farge Branch, 1730 Llano Street, Santa Fe, NM 87501, (505) 955–4860.

New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, NM 87507, (505) 476–9717.

Los Alamos National Laboratory, Public Reading Room, P.O. Box 1663, Mail Stop M9991, Los Alamos, NM 87545, Phone: (505) 667–0216.

Oregon

Portland State University, Government Information, Branford Price Millar Library, 1875 SW Park Avenue, Portland, OR 97201, (503) 725–5874.

South Carolina

University of South Carolina–Aiken, Gregg-Graniteville Library, 471 University Parkway, Aiken, SC 29801, (803) 641–3320.

South Carolina State Library, 1500 Senate Street, Columbia, SC 29211, (803) 734–8026.

Washington

U.S. Department of Energy, Public Reading Room, Consolidated Information Center, 2770 University Drive, Room 101L, Richland, WA 99352, (509) 372–7443.

University of Washington, Suzzallo-Allen Library, Government Publications Division, Seattle, WA 98195, (206) 543–1937.

Gonzaga University, Foley Center Library, 101–L 502 East Boone Avenue, Spokane, WA 99258, (509) 313–5931.

Individual commentors' names and addresses (including e-mail addresses) received as part of oral presentations at the public hearings or comment documents on this Draft EIS normally are part of the public record. DOE plans to reproduce comment documents in their entirety in the Final EIS, as appropriate, and to post all comment documents received in their entirety on the website for this EIS at the close of the public comment period. Any person wishing to have his/her name, address, or other identifying information withheld from the public record of comment documents must state this request prominently at the beginning of any comment document. DOE will honor the request to the extent allowable by law. All submissions from organizations or businesses will be included in the public record and open to public inspection in their entirety.

Next Steps

Following the end of the public comment period, DOE will consider public comments on the Draft EIS in preparing the Final EIS. After issuing the Final EIS, DOE will consider the environmental impact(s) presented in the Final EIS, along with other appropriate information in proposing its decision(s) related to the disposal of GTCC and GTCC-like wastes. DOE will not issue a Record of Decision until its required Report to Congress has been provided and appropriate action has been taken by Congress in accordance with the Energy Policy Act of 2005.

Issued in Washington, DC, on February 17, 2011.

Christine Gelles,

Director, Office of Disposal Operations, Office of Environmental Management.

[FR Doc. 2011–4151 Filed 2–24–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee Meeting

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the reestablished Electricity Advisory Committee (EAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 10, 2011; 8:30 a.m.–4:30 p.m.

ADDRESSES: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David Meyer, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–024, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone: (202) 586–8118 or E-mail: *David.Meyer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was re-established in August 2010 to provide advice to the U.S. Department of Energy in implementing the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and related statutes, as well as modernizing the nation's electricity delivery infrastructure.

Tentative Agenda: The meeting of the Electricity Advisory Committee is expected to include discussion of the activities of the Energy Storage Technologies Subcommittee, the Smart Grid Subcommittee, the Environmental Regulations and Reliability Working Group, and a discussion of potential study topics for consideration by the EAC, as requested by the DOE Office of Electricity Delivery and Energy Reliability.

A draft agenda of the EAC meeting is available on the Committee Web site at: *http://www.oe.energy.gov/eac.htm.* The meeting agenda may change to accommodate Committee business. For EAC agenda updates, see the Committee Web site.

Public Participation: The EAC welcomes the attendance of the public at its advisory committee meetings. Individuals who wish to offer public comments at the EAC meeting may do so on the day of the meeting, Thursday, March 10, 2011. Approximately one-half hour will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement to Mr. David Meyer.

You may submit comments, identified by "*Electricity Advisory Committee Open Meeting*", by any of the following methods:

- *Mail/Hand Delivery/Courier:* David Meyer, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–024, 1000 Independence Avenue, SW., Washington, DC 20585.
- *E-mail: David.Meyer@hq.doe.gov.* Include "Electricity Advisory Committee Open Meeting" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and identifier. All comments received will be posted without change to *http://www.oe.energy.gov/eac.htm,* including any personal information provided.

Docket: For access to the docket, to read background documents or

comments received, go to *http://www.oe.energy.gov/eac.htm.*

The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. You must also explain the reasons why you believe the deleted information is exempt from disclosure. DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of the U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening. DOE therefore encourages those wishing to comment to submit comments electronically by e-mail. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the EAC meeting will be posted on the Committee Web site at *http://www.oe.energy.gov/eac.htm* or by contacting Mr. David Meyer at the address above.

Issued at Washington, DC on February 18, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–4242 Filed 2–24–11; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13880–000]

Cuffs Run Pumped Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 18, 2010, Cuffs Run Pumped Storage, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cuffs Run Pumped Storage Project, located on Cuffs Run and the Susquehanna River, near Craley Township, in York and Lancaster Counties, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 9,800-foot-long, 225-foot-high earthen dam across Cuffs Run and an unnamed stream forming an upper reservoir that would have an estimated total usable storage capacity of 25,000 acre-feet and a normal maximum surface elevation of 680 feet mean sea level (msl); (2) a new 700-foot-long, 95-foot-high dike across the eastern side of Cuffs Run and a new 1,300-foot-long, 35-foot-high dike across the western end of the upper reservoir; (3) a new 300-foot-long, 110-foot-wide channel in the upper reservoir leading to a submerged intake; (4) a new 1,500-foot-long, 45-foot-diameter concrete-lined penstock splitting into three 20-foot-diameter steel-lined penstocks at the powerhouse; (5) a new underground powerhouse with approximate dimensions of 200 feet long by 150 feet wide, with an 18-foot-diameter vent and cable shaft through the top, and containing three Francis reversible pump turbines rated at approximately 330 megawatts (MW) each; (6) a new tailrace composed of three concrete-lined tunnels; (7) an existing lower reservoir (Lake Clarke) having a usable storage capacity of 68,870 acre-feet and a normal pool elevation of 228 feet msl; (8) a new porous dike that separates the outlet structures from Lake Clarke; (9) a new 3-mile-long, 500-kilovolt (kV) transmission line that would interconnect to a 250-kV transmission line owned by PJM; and (10) appurtenant facilities. The estimated annual generation of the Cuffs Run Pumped Storage Project would be 1,750 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, 33 Commercial Street, Gloucester, MA, 01930; *phone:* (978) 226–1531.

FERC Contact: Timothy Konnert, (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13880–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4258 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–3834–029; ER05–1469–007.

Applicants: DTE Energy Trading, Inc., DTE East China, LLC.

Description: Notice of Change in Status of DTE Energy Trading, Inc., *et. al.*

Filed Date: 02/16/2011.

Accession Number: 20110216–5126.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 9, 2011.

Docket Numbers: ER10–2497–002.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Alliant Energy Corporate Services, Inc. Notice of Change in Status.

Filed Date: 02/16/2011.

Accession Number: 20110216–5087.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 9, 2011.

Docket Numbers: ER11–2224–002.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing—ICAP Demand Curve Interim Values to be effective 5/1/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5027.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011

Docket Numbers: ER11–2587–001.

Applicants: J. Aron & Company.

Description: J. Aron & Company submits tariff filing per 35: J. Aron & Company Substitute First Revised MBR Tariff to be effective 2/28/2011.

Filed Date: 02/16/2011.

Accession Number: 20110216–5102.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 9, 2011.

Docket Numbers: ER11–2741–001.

Applicants: CPV Batesville, LLC.

Description: CPV Batesville, LLC submits tariff filing per 35.17(b): Amendment to Market-Based Rate Application to be effective 2/1/2011.

Filed Date: 02/16/2011.

Accession Number: 20110216–5112.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 9, 2011.

Docket Numbers: ER11–2831–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 2–3–11 Att. L and Mod A unsecured credit to be effective 4/5/2011.

Filed Date: 02/03/2011.

Accession Number: 20110203–5130.

Comment Date: 5 p.m. Eastern Time on Thursday, February 24, 2011.

Docket Numbers: ER11–2884–000.

Applicants: Alex Energy LLC.

Description: Alex Energy LLC submits a notice of cancellation.

Filed Date: 02/11/2011.

Accession Number: 20110211–0049.

Comment Date: 5 p.m. Eastern Time on Friday, March 4, 2011.

Docket Numbers: ER11–2898–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Load Management Market Rule Changes to be effective 4/18/2011.

Filed Date: 02/16/2011.

Accession Number: 20110216–5098.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 9, 2011.

Docket Numbers: ER11–2899–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–02–16 CAISO's Errata to BrightSource LGIA Amendments to be effective 1/26/2011.

Filed Date: 02/16/2011.

Accession Number: 20110216–5101.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 9, 2011.

Docket Numbers: ER11–2900–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: G132 LGIA filing to be effective 2/18/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5025.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2901–000.

Applicants: Duke Energy Kentucky, Inc.

Description: Duke Energy Kentucky, Inc. submits tariff filing per 35.13(a)(2)(iii: MBR Tariff Amendments to be effective 4/18/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5050.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2902–000.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Indiana, Inc. submits tariff filing per 35.13(a)(2)(iii: MBR Tariff Amendments to be effective 4/18/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5051.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2903–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: R34 LGIA Filing to be effective 2/18/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5056.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2904–000.

Applicants: Settlers Trail Wind Farm, LLC.

Description: Settlers Trail Wind Farm, LLC submits tariff filing per 35.12: Settlers Trail Wind Farm, LLC, Market-Based Rate Tariff to be effective 2/17/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5068.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2905–000.

Applicants: Pioneer Trail Wind Farm, LLC.

Description: Pioneer Trail Wind Farm, LLC submits tariff filing per 35.12: Pioneer Trail Wind Farm, LLC, Market-Based Rate Tariff to be effective 2/17/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5069.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2906–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 205 Filing—Measurement and Performance of SCRs, Aggregations, RIPs to be effective 4/11/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5072.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

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.

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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4236 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12495–001]

Cascade Creek, LLC; Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request For Preliminary Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Unconstructed Project, Alternative Licensing Process.

b. *Project No.:* 12495–001.

c. *Date Filed:* February 11, 2011.

d. *Applicant:* Cascade Creek, LLC.

e. *Name of Project:* Cascade Creek Hydroelectric Project.

f. *Location:* On Swan Lake and Cascade Creek, approximately 15 miles northeast of Petersburg, Alaska. The project would occupy lands of the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Chris Spens, Licensing Manager, Cascade Creek, LLC, 3633 Alderwood Ave., Bellingham, WA 98225; (360) 738–9999, *e-mail: cspens@thomasbayhydro.com.*

i. *FERC Contact:* Dianne Rodman, at (202) 502–6077.

j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (DEA), and (2) comments on the Draft License Application.

k. *Deadline for Filing:* 90 days from the issuance of this notice.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item (h), and filed with FERC. Comments may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Cascade Creek, LLC has provided the Preliminary DEA and Draft License Application to interested entities and parties. These documents are also available for review at the applicant's Web site (*http://www.thomasbayhydro.com*) and the Petersburg Public Library in Alaska.

m. With this notice, we are initiating consultation with the Alaska State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Dated: February 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4259 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–88–000]

American Midstream (Louisiana Intrastate), LLC; Notice of Filing

Take notice that on February 15, 2011, American Midstream (Louisiana Intrastate), LLC filed to revise its Statement of Operating Conditions to provide for a new Fuel Retention calculation as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Dated: February 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4261 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–87–000]

Moss Bluff Hub, LLC; Notice of Filing

Take notice that on February 11, 2011, Moss Bluff Hub, LLC filed to revise its Statement of General Terms and Standard Operating Conditions to reflect the addition of Bobcat Gas Storage to the list of entities whose service agreements constitute a Valid Service Agreement as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Dated: February 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4260 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2905–000]

Pioneer Trail Wind Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pioneer Trail Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 9, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4235 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2904–000]

Settlers Trail Wind Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Settlers Trail Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 9, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4233 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13015–001]

Town of Edgartown; Notice of Public/Technical Meeting To Discuss Information and Monitoring Needs for a License Application for a Pilot Project

a. *Type of Application:* Draft Pilot License Application.

b. *Project No.:* 13015–001.

c. *Applicant:* Town of Edgartown (Edgartown).

d. *Name of Project:* Muskeget Channel Tidal Energy Project.

e. *Location:* In Muskeget Channel, between the islands of Martha's Vineyard and Nantucket, Dukes County, Massachusetts.

f. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

g. *Applicant Contact:* Ms. Pamela Dolby, Town Administrator, Town of Edgartown, 70 Main Street, Edgartown, MA 02539; (508) 627–6180.

h. *FERC Contact:* Michael Watts, phone: (202) 502–6123, e-mail: *Michael.watts@ferc.gov.*

i. *Project Description:* The proposed Muskeget Channel Tidal Energy Project would consist of: (1) 13 commercially operated OCGen™ horizontal hydrokinetic cross-flow turbine generation units with a total installed capacity of 5 megawatts, and one experimental turbine unit that would be used to test various tidal energy technologies; (2) a mooring and anchoring system attached to each unit consisting of four mooring lines, an anchor, and a clump weight; (3) two alternative submarine cable routes consisting of a either a 3.5-mile-long, or a 5-mile-long submarine cable with two 13.8-kilovolt (kv) transmission lines and a 4.0-kv transmission line connecting the turbine generation units to an onshore substation located either in the Chappaquiddick or Katama sections of Edgartown; (4) two alternative onshore transmission line routes consisting of a 34.5 kv transmission line connecting either the Chappaquiddick or Katama onshore substation to an existing distribution line in Edgartown; and (5) appurtenant facilities. The project would have an average annual generation of 10.95 gigawatt-hours.

j. *Licensing Process:* On February 1, 2011, Edgartown filed a Notice of Intent and request for waivers of certain regulations of the Federal Energy Regulatory Commission's (Commission) Integrated Licensing Process to expedite processing of a license application for the Muskeget Channel Tidal Energy Pilot Project. Edgartown expects to file a final license application for a pilot project with the Commission by February 15, 2012.

k. *Notice Purpose:* The purpose of this notice is to inform you of the opportunity to participate in the upcoming joint public/technical meeting with Massachusetts Environmental Policy Act (MEPA) Office, Commission staff, and Edgartown.[1] The purpose of the meeting is to discuss information and monitoring needs for the final license application and to provide a public consultation session for the purposes of MEPA review and scoping of the Environmental Impact Report (EIR). All interested individuals, organizations, and agencies are invited to attend the meeting. The time and location of the meeting is as follows:

Meeting Schedule and Location

Meeting

Monday, March 7, 2011, 11 a.m. (local time). Edgartown Town Hall, 70 Main Street, Edgartown, MA 02539.

A land-based site visit to the proposed cable landfall location(s) will take place after the meeting.

Anyone in need of directions may contact Mr. Stephen Barrett at: (781) 852 3125, or via e-mail at: *sbarrett@hmmh.com.*

To help focus discussions, Commission staff encourages participants to review Edgartown's draft pilot license application and monitoring plans filed with the Commission on February 1, 2011. These materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number P–13015–001 to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support.

l. *Meeting Objectives:* At the technical meeting, Commission staff will focus the discussion on the information gaps that need to be addressed to ensure that sufficient information exists for the Commission to make a determination on whether the proposed project meets the criteria for a pilot project and for processing a license application for a pilot project upon its filing with the Commission.

m. *MEPA Review:* Edgartown filed an expanded Environmental Notification Form (ENF) for the Muskeget Channel Tidal Energy Project with the MEPA Office. Edgartown is requesting a single Environmental Impact Report (EIR) rather than the typical two-stage draft and final EIR. The expanded ENF was noticed in the February 9, 2011, issue of the *Environmental Monitor. http://www.env.state.ma.us/mepa/emonitor.aspx.*

Any agency or person may comment on the expanded ENF and the proposed project, including: feasible alternatives, potential environmental impacts, potential mitigation measures, and what additional information and analysis to require in the scope for the EIR. A MEPA public consultation session will be held on March 7, 2011, in conjunction with the Commission's technical meeting. Written comments on the ENF must be sent to the MEPA office by March 17, 2011. Please mail your comments to:

[1] In order to coordinate the State and Federal reviews of the project, this meeting is being held in lieu of the May 1, 2011, technical meeting listed in the Commission's notice issued on February 8, 2011.

Secretary Richard K. Sullivan, Executive Office of Energy and Environmental Affairs, Attn: MEPA Office [Aisling O' Shea], EEA No. 14696, 100 Cambridge Street, Suite 900, Boston, MA 02114.

To send comments by e-mail or fax, or for questions regarding the MEPA process, contact Aisling O'Shea, MEPA Analyst at: e-mail: *aisling.o'shea@state.ma.us;* Fax: (617) 626–1181 or Phone: (617) 626–1024.

In addition, please file a copy of your comments with the Federal Energy Regulatory Commission. Your comments may be filed electronically via the Internet (instructions are on the Commission's Web site at: *http://www.ferc.gov/docs-filing/efiling.asp*). For assistance, please contact FERC Online Support at *FERCOnlinesupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although FERC strongly encourages electronic filing, your comments may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please put the docket number, P–13015–001 on the first page of your response.

n. *Procedures:* The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Dated: February 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4263 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD11–6–000]

Priorities for Addressing Risks to the Reliability of the Bulk-Power System; Notice Establishing Date for Comments

On February 8, 2011, the Federal Energy Regulatory Commission convened a Commissioner-led technical conference regarding priorities for addressing risks to the reliability of the Bulk-Power System, as previously announced.[1] Any entity or person wishing to submit written comments regarding the matters discussed at that technical conference should submit such comments in this docket, AD11–6–000, on or before March 21, 2011.

Dated: February 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4262 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

[1] *Notice of Technical Conference re Priorities for Addressing Risks to the Reliability of the Bulk-Power System,* 76 FR 2369 (January 13, 2011), as supplemented by the *Reliability Technical Conference Agenda* issued January 7, 2011.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Exempt:		
1. CP11–31–000.	2–14–11	Gertrude Johnson.[1]
2. Project No. 2232–000.	2–8–11	Hon. Mick Mulvaney.
3. Project No. 2615–000.	2–10–11	Samantha Davidson.[2]
4. Project No. 2851–000.	2–15–11	Mary Lewallen.[3]
5. Project No. 12965.	2–8–11	Penni Borghi.[4]

[1] Record of conference call.
[2] Telephone record.
[3] E-mail exchange.
[4] E-mail exchange record.

Dated: February 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4234 Filed 2–24–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8995–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed 02/14/2011 through 02/18/2011
Pursuant to 40 CFR 1506.9

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment

letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110044, Draft EIS, FHWA, CA, Yerba Buena Island Ramps Improvement Project on Interstate 80 (I–80), Proposals to Replace the Existing Westbound on- and off-ramp, Funding, San Francisco County, CA, Comment Period Ends: 04/11/2011, Contact: Greg Kolle 916–498–5852.

EIS No. 20110045, Final EIS, NRC, ID, Eagle Rock Enrichment Facility, Construct, Operate, and Decommission, Proposed Facility would Enrich Uranium for Use in Commercial Nuclear Fuel for Power Reactors, Bonneville County, ID, Review Period Ends: 03/28/2011, Contact: Stephen Lemont 301–415–5163.

EIS No. 20110046, Draft Supplement, USFS, CA, Salt Timber Harvest and Fuel Hazard Reduction Project, Additional Analysis and Supplemental Information, Proposing Vegetation Management in the Salt Creek Watershed, South Fork Management Unit, Hayfork Ranger District, Shasta-Trinity National Forest, Trinity County, CA, Comment Period Ends: 04/11/2011, Contact: Joshua Wilson 530–226–2422.

EIS No. 20110047, Draft Supplement, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Supplement Information on the 2000 FEIS, Implementation, City of San Francisco, San Francisco County, CA, Comment Period Ends: 04/12/2011, Contact: Ronald Bochenek 619–532–0906.

EIS No. 20110048, Draft EIS, DOE, 00, Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC–Like Waste, Proposed Development, Operation, and Long-Term Management of a Disposal Facility, Comment Period Ends: 06/27/2011, Contact: Arnold Edelman 301–903–7238.

EIS No. 20110049, Draft EIS, USFWS, HI, Palmyra Atoll National Wildlife Refuge Rat Eradication Project, Proposing to Restore and Protect the Native Species and Habitats, Implementation, Northern Line Islands, Honolulu, HI, Comment Period Ends: 04/11/2011, Contact: Ben Harrison 503–231–6177.

EIS No. 20110050, Final EIS, USACE, 00, Missouri River Commercial Dredging, Proposal to Extract Sand and Gravel from the Missouri River, U.S. Corps of Engineers Section 10 and 404 Permits, Kansas City, Central Missouri and Greater St. Louis, Missouri, Review Period Ends: 03/28/2011, Contact: Cody Wheeler 816–389–3739.

EIS No. 20110051, Draft EIS, USN, CA, Marine Corps Air Ground Combat Center Project, Land Acquisition and Airspace Establishment to Support Large-Scale MAGTF Live-Fire and Maneuver Training Facility, San Bernardino County, CA, Comment Period Ends: 04/11/2011, Contact: Chris Proudfoot 760–830–3764.

EIS No. 20110052, Draft EIS, USFS, 00, PROGRAMMATIC—National Forest System Land Management Planning, Proposing a New Rule at 36 CFR Part 219 Guide Development, Revision, and Amendment of Land Management Plans for Unit of the National Forest System, Comment Period Ends: 05/25/2011, Contact: Brenda Halter-Glenn 202–260–9400.

EIS No. 20110053, Final EIS, USACE, 00, PROGRAMMATIC—Ohio River Mainstem System Study, System Investment Plan (SIP) for Maintaining Safe, Environmentally Sustainable and Reliable Navigation on the Ohio River, IL, IN, OH, KY, PA and WV, Review Period Ends: 03/28/2011, Contact: Dr. Hank Jarboe 513–684–6050.

EIS No. 20110054, Revised Draft EIS, FTA, CA, Crenshaw Transit Corridor Project, Updated Information on a New Evaluation of Maintenance Sites, Proposals to Improve Transit Services, Funding, Los Angeles County Metropolitan Transportation Authority (LACMTA), Los Angeles County, CA, Comment Period Ends: 04/11/2011, Contact: Ray Tellis 213–202–3950.

Amended Notices

EIS No. 20100468, Draft EIS, USACE, MS, Mississippi River Gulf Outlet (MRGO) Ecosystem Restoration Study, To Develop a Comprehensive Ecosystem Restoration Plan to Restore the Lake Borgne, Implementation, LA, Comment Period Ends: 03/04/2011, Contact: Tammy Gilmore 504–862–1002. Revision to FR Notice 12/17/2010: Extending Comment Period from 02/14/2011 to 03/04/2011.

Dated: February 22, 2011.

Cliff Rader,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–4255 Filed 2–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0082; FRL–8863–3]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 28, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at their Division: Biopesticides and Pollution Prevention Division (7511P), or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action Is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petitions so that the public has an opportunity to

comment on the requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petitions summaries referenced in this unit.

New Tolerances

1. PP 0E7790. (EPA–HQ–OPP–2010–0186). Nissan Chemical Industries, Inc., 3–7–1, Kanda Nishiki-cho, Chiyoda-ku, Tokyo, Japan c/o Lewis & Harrison, 122 C Street, NW., Suite 740, Washington, DC 20001, proposes to establish tolerances in 40 CFR part 180 for residues of the fungicide amisulbrom, 3-[3-bromo-6-fluoro-2-methyl-*H*-indol-1-yl sulfonyl]-*N,N*-dimethyl-1*H*-1,2,4-triazole-1-sulfonamide and its metabolite IT–4, in or on tomatoes at 0.5 parts per million (ppm) and tomato, paste at 1.2 ppm. The proposed tolerances are for tomatoes and its processed products treated in Western Europe and imported into the United States. There will be no U.S. registration. Tandem mass spectrographic detection (LC/MS/MS) is used for determination and quantification of amisulbrom. The limit of quantitation (LOQ) is 0.01 ppm. The Food and Drug Administration (FDA) Multi-Residue Protocols C and E were tested and considered suitable as either an enforcement method or as a confirmatory method. Contact: Olga Odiott, (703) 308–9369, Registration Division (7505P), e-mail address: *odiott.olga@epa.gov.*

2. *PP 0E7802.* (EPA–HQ–OPP–2010–1018). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W., Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide quizalofop-ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), including its metabolites and degradates, in or on rapeseed subgroup 20A, except flax, seed at 1.0 ppm; gold of pleasure, meal at 1.5 ppm; crambe, meal at 1.5 ppm; sorghum, grain at 0.2 ppm; sorghum, forage at 0.2 ppm; sorghum, stover at 0.35 ppm; and sorghum, aspirated grain at 1.0 ppm. An adequate analytical methodology, high-pressure liquid chromatography (HPLC) using either ultraviolet (UV) or fluorescence detection is available for enforcement purposes and is available in the Food and Drug Administration Pesticide Analytical Method Volume II (PAM II, Method I). Contact: Laura E. Nollen, (703) 305–7390, Registration Division (7505P), e-mail address: *nollen.laura@epa.gov.*

3. *PP 0E7804.* (EPA–HQ–OPP–2010–0472). Interregional Research Project No. 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W., Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide zeta-cypermethrin, (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive *R*-isomers, in or on avocado; papaya; star apple; black sapote; mango; sapodilla; canistel; and mamey sapote at 0.45 ppm. There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances, Gas Chromatography with Electron Capture Detection (GC/ECD). Contact: Andrew Ertman, (703) 308–9367, Registration Division (7505P), e-mail address: *ertman.andrew@epa.gov.*

4. *PP 0E7809.* (EPA–HQ–OPP–2010–1017). Interregional Research Project No. 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W., Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on caneberry, subgroup 13–07A at 0.01 ppm; and bushberry, subgroup 13–07B at 0.01 ppm. Adequate analytical methodology, HPLC with electrospray ionization tandem mass spectrometry (ESI–MS/MS) detection, is available for enforcement purposes. Contact: Sidney C. Jackson, (703) 305–7610, Registration Division (7505P), e-mail address: *jackson.sidney@epa.gov.*

5. *PP 0F7763.* (EPA–HQ–OPP–2010–0888). E. I. DuPont de Nemours and Company, DuPont Crop Protection, 1700 Market St., Wilmington, DE 19898, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on bushberry, subgroup 13–07B at 2.5 ppm; large shrub/tree berry, subgroup 13–07C at 2.5 ppm; low growing berry, subgroup 13–07G at 2.5 ppm; ti palm, roots at 0.35 ppm; ti palm, leaves at 13 ppm; root and tuber vegetables, group 1 at 0.35 ppm; leaves of root and tuber vegetables, group 2 at 40 ppm; sugar beet molasses at 11 ppm; onion, bulb, subgroup 3–07A at 0.35 ppm; peanut, nutmeat at 0.35 ppm; peanut, hay at 90 ppm; tea, dried leaves at 50 ppm and to increase tolerances in or on fruiting vegetables (except cucurbits), group 8 from 0.70 ppm to 0.90 ppm; cucurbit vegetables, group 9 from 0.25 ppm to 0.30 ppm; and okra from 0.70 ppm to 0.90 ppm. Spectrometry is available to enforce the proposed tolerances. Contact: Rita Kumar, (703) 308–8291, Registration Division (7505P), e-mail address: *kumar.rita@epa.gov.*

6. *PP 0F7783.* (EPA–HQ–OPP–2010–0968). Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on corn, field, grain at 0.01 ppm; corn, field, forage at 0.6 ppm; corn, field, stover at 2.5 ppm; corn, field, refined oil at 0.03 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 2.5 ppm; poultry, fat at 0.01 ppm; and poultry, liver at 0.02 ppm. Adequate enforcement methodology gas chromatography/mass spectrometry detection (GC/MSD) for detecting and measuring levels of etoxazole is available to enforce proposed tolerances in/on corn raw and processed commodities. Gas chromatography/nitrogen phosphorus detection (GC/NPD) enforcement methodology is also available to enforce proposed livestock commodity tolerances. Contact: Autumn Metzger, (703) 305–5314, Registration Division (7505P), e-mail address: *metzger.autumn@epa.gov.*

7. *PP 0F7805.* (EPA–HQ–OPP–2010–1079). Syngenta Crop Protection, Inc., Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC, 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide thiamethoxam (CAS Reg. No. 153719–23–4), 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine and its metabolite, *N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-*N'*-nitro-guanidine, in or on grain, cereal, group 15, except barley and corn at 0.02 ppm. Syngenta Crop Protection, Inc., has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with either UV or MS detections. The limit of detection (LOD) for each analyte of this method is 1.25 nanograms (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantification (LOQ) is 0.005 ppm for milk and juices, and 0.01 ppm for all

other substrates. Contact: Kable Bo Davis, (703) 306–0415, Registration Division (7505P), e-mail address: *davis.kable@epa.gov.*

Amended Tolerance

PP 0E7802. (EPA–HQ–OPP–2010–1018). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W., Princeton, NJ 08540, proposes to amend the tolerance in 40 CFR 180.441 for residues of the herbicide quizalofop-ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), including its metabolites and degradates, by removing the established tolerance for canola, seed at 1.0 ppm from the table in paragraph (a)(3) upon the approval of the aforementioned tolerances under Unit II. "New Tolerance", as the individual tolerance will be superseded by inclusion in rapeseed subgroup 20A, except flax, seed. The petition also proposes to remove section (a)(4), as these tolerances expired on June 14, 1999.

The petition, PP 0E7802, also proposes to amend the tolerances in 40 CFR part 180.441 by combining the tables for sections (a)(1) and (a)(3) into one table under section (a)(1), and by removing section (a)(3). The petition further proposes to revise the tolerance expression under section (a)(1) to read as follows: "Tolerances are established for residues of the herbicide quizalofop ethyl, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those quizalofop ethyl residues convertible to 2-methoxy-6-chloroquinoxaline, expressed as the stoichiometric equivalent of quizalofop ethyl, in or on the commodity."

The petition, PP 0E7802, additionally proposes to revise the tolerance expression under section (a)(2) to read as follows: "Tolerances are established for residues of the herbicide quizalofop ethyl, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those quizalofop ethyl residues convertible to quizalofop (2-[4-(6-chloroquinoxalin-2-yl-oxy)phenoxy]propanoic acid), expressed as quizalofop, in or on the commodity."

Finally, the petition proposes to revise the tolerance expression under section (c) to read as follows: "*Tolerances with regional registrations.* Tolerances with regional registration are established for residues of the herbicide quizalofop ethyl, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those quizalofop ethyl residues convertible to 2-methoxy-6-chloroquinoxaline, expressed as the stoichiometric equivalent of quizalofop ethyl, in or on the commodity." Contact: Laura E. Nollen, (703) 305–7390, Registration Division (7505P), e-mail address: *nollen.laura@epa.gov.*

New Tolerance Exemptions

1. *PP 0E7697.* (EPA–HQ–OPP–2010–0271). Novozymes, North America, Inc., P.O. Box 576, 77 Perry Chapel Church Road, Franklinton, NC 27525, proposes to establish an exemption from the requirement of a tolerance for residues of lipase, triacylglycerol (CAS Reg. No. 9001–62–1), under 40 CFR 180.950 when used as an inert ingredient in pesticide formulations as an aid in the removal of lipids when used in contact surface sanitizers. The petitioner believes no analytical method is needed because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations. Contact: Elizabeth Fertich, (703) 347–8560, Registration Division (7505P), e-mail address: *fertich.elizabeth@epa.gov.*

2. *PP 0F7778.* (EPA–HQ–OPP–2011–0012). Marrone Bio Innovations, Inc., EPA Company No. 84059, 2121 Second St., Suite B–107, Davis, CA 95618, proposes to establish an exemption from the requirement of a tolerance for residues of the biological insecticide, *Burkholderia sp strain* A396, under 40 CFR part 180 in or on all agricultural commodities. An analytical method for detecting and measuring the levels of the pesticide residue for *Burkholderia sp strain* A396 is not applicable. It is expected that when used as proposed, *Burkholderia sp strain* A396 would not result in residues that are of toxicological concern. Contact: Anna Gross, (703) 305–5614, Biopesticides and Pollution Prevention Division (7511P), e-mail address: *gross.anna@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–4142 Filed 2–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8863–4]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Tables 1, 2, and 3 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows the November 10, 2010 and November 17, 2010 **Federal Register** Notices of Receipt of Requests from the registrants listed in Table 4 of Unit II. to voluntarily cancel these product registrations. In these notices, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received comments on the November 10, 2010 notice but none merited its further review of the requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective as noted in Unit IV. of this cancellation order.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; fax number: (703) 308–8090; e-mail address: *tatinclaux.maia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale,

distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 117 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Tables 1, 2, and 3 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA Reg. No.	Product name	Active ingredients
000228–00196	Riverdale Patron TM DP–4 Ester	2, 4-DP
000228–00212	Riverdale Prometon 1.5 Ready To Use Vegetation Killer.	Prometon
000228–00213	Riverdale Prometon 5E Vegetation Killer	Prometon
000228–00214	Riverdale Prometon 3.73E Vegetation Killer	Prometon
000228–00685	Imazapyr E-Pro 2E—Site Prep & Basal Herbicide	Imazapyr isopropylamine salt
000228–00686	Imazapyr E-Pro 2—VM & Aquatic Herbicide	Imazapyr
000228–00687	Imazapyr E-Pro 4—Forestry Herbicide	Imazapyr isopropylamine salt
000239–02391	Ortho Dormant Disease Control	Calcium polysulfide
000264–01001	Scout Manufacturing Use Product	Tralomethrin
000264–01003	Scout Insecticide	Tralomethrin
000264–01004	Scout X-tra Insecticide	Tralomethrin
000264–01005	Scout 0.3 EC Insecticide	Tralomethrin
000264–01009	HR 20900 Insecticide	Deltamethrin Tralomethrin
000264–01010	Scout X-tra Gel Insecticide	Tralomethrin
000432–00755	Saga WP Insecticide	Tralomethrin
000432–00760	Saga WSB	Tralomethrin
000432–00784	Saga RTU–FA Insecticide	Tralomethrin
000432–01278	Tralex Manufacturing Use Product II	Tralomethrin
000506–00157	Tat House & Garden Insecticide Killer	Tetramethrin Phenothrin
000655–00805	Noxfish Fish Toxicant Liquid-Emulsifiable	Cube Resins other than rotenone Rotenone
000655–00806	Cube Powder Fish Toxicant	Cube Resins other than rotenone Rotenone
000655–00807	Powdered Cube Root	Cube Resins other than rotenone Rotenone
000802–00533	Noxall Vegetation Killer	Prometon
001448–00093	Busan 1016	Carbamodithioic acid, cyano-, disodium salt Metam-sodium
001448–00361	Busan 1236	Metam-sodium
001663–00035	Grant's Flying & Crawling Insect Killer	Permethrin Piperonyl butoxide Tetramethrin
001677–00219	Sanova Base (25%)	Sodium chlorite
001839–00115	Onyxide 200 Oil Field Application Preservative	Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine
001839–00156	Onyxide 200–50%	Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine
004822–00491	Windex Antibacterial Glass & Surface Cleaner	Isopropyl alcohol Propylene glycol
005741–00009	Sparquat 256 Germicidal Cleaner	1–Decanaminium, N,N-dimethyl-N-octyl-, chloride; 1–Octanaminium, N,N-dimethyl-N-octyl-, chloride; Alkyl dimethyl benzyl ammonium chloride (50% C–14, 40%C12, 10%C16); 1–Decanaminium, N-decyl-N,N-dimethyl-, chloride
009688–00192	Chemsico Herbicide Concentrate P	Prometon
009779–00133	Riverside 912 Herbicide	MSMA (and salts)
028293–00160	Unicorn House and Carpet Spray 11	Phenothrin Tetramethrin
028293–00215	Unicorn IGR Pressurized Spray	Phenothrin Pyriproxyfen Tetramethrin
033753–00025	Myacide DZ	Dazomet
033753–00028	Myacide HT T	Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine
033753–00029	Myacide HT	Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine
034704–00647	Metam Soil Fumigant	Metam-sodium
034704–00769	Nemasol 42%	Metam-sodium
053883–00071	Martin's Permethrin Termiticide/Insecticide	Permethrin
053883–00093	Glyphosate Technical	Glyphosate
053883–00190	Permethrin .5% Multi-Purpose Insecticide Spray	Permethrin
066330–00063	ETK–1101	Sodium tetrathiocarbonate
066330–00069	Enzone	Sodium tetrathiocarbonate
072155–00007	Merit + Tempo Ready-to-Spray Insecticide	Cyfluthrin Imidacloprid
072155–00008	Tempo 0.1 Fire Ant Granular	Cyfluthrin
072155–00011	Merit 0.0003% PM Plus Fertilizer	Imidacloprid
072155–00016	Glyphosate 2% RTU Herbicide	Glyphosate-isopropylammonium
072155–00017	Prodiamine 0.26% Granular Herbicide Plus Lawn Fertilizer.	Prodiamine

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA Reg. No.	Product name	Active ingredients
072155–00018	Prodiamine 0.28%G Lawn Herbicide	Prodiamine
072155–00020	Trimec Granular Herbicide Plus Fertilizer	Dicamba 2,4-D Mecoprop-P
072155–00025	Beta-Cyfluthrin 0.0015% RTU Insecticide	beta-Cyfluthrin
072155–00026	Beta-Cyfluthrin 0.38% Concentrate Insecticide	beta-Cyfluthrin
072155–00030	Imidacloprid 0.36% + Beta-Cyfluthrin 0.18% RTS Insecticide.	beta-Cyfluthrin Imidacloprid
072155–00033	Dylox Insect Granules	Trichlorfon
072155–00037	Merit Concentrate Insecticide	Imidacloprid
072155–00038	Merit RTU Insecticide	Imidacloprid
072155–00041	Merit + Tempo Ready-to-Use Insecticide	Cyfluthrin Imidacloprid
072155–00042	Merit + Tempo Concentrated Insecticide	Cyfluthrin Imidacloprid
072155–00045	Tempo Insecticide	Cyfluthrin
072155–00050	Merit + Tempo Concentrate Insecticide II	Cyfluthrin Imidacloprid
072155–00052	Laser Ant & Roach Killer Pump Spray II	Cyfluthrin
072155–00053	Merit PM Plus Fertilizer	Imidacloprid
072155–00054	Tempo 1 FAD	Cyfluthrin
072155–00059	Imidacloprid 1.85 RD Insecticide	Imidacloprid
072155–00060	Trimec+ Prodiamine Granular Herbicide Plus Fertilizer	Dicamba 2,4-D Mecoprop-P Prodiamine
072155–00065	Tempo 0.38% Concentrated Insecticide	beta-Cyfluthrin
072642–00007	Spinosad Ear Tag	Spinosad
AL000001	Penncap-M Microencapsulated Insecticide	Methyl parathion
AL050003	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
AL060003	Permethrin 3.2 E.C.	Permethrin
AR000006	Penncap-M Microencapsulated Insecticide	Methyl parathion
AR050009	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
CA000001	Penncap-M Microencapsulated Insecticide	Methyl parathion
GA050006	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
IL100001	Prentox Prenfish Toxicant	Cube Resins other than rotenone Rotenone
LA050012	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
LA090005	Penncap-M Microencapsulated Insecticide	Methyl parathion
MO990005	Dylox 80 Turf and Ornamental Insecticide	Trichlorfon
MS000009	Penncap-M Microencapsulated Insecticide	Methyl parathion
MS050018	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
MT050002	Prentox Prenfish Toxicant	Cube Resins other than rotenone Rotenone
NY080011	Prentox Prenfish Toxicant	Cube Resins other than rotenone Rotenone
SC050005	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
TX050004	Waylay 3.2 Ag Permethrin Insecticide	Permethrin
TX990012	Penncap-M Microencapsulated Insecticide	Methyl parathion

TABLE 2—TEMEPHOS PRODUCT CANCELLATIONS

EPA Reg. No.	Product name	Active ingredients
000192–00213	Temexx Mini-G Larvicide	Temephos
000192–00215	Temexx Micro-G Larvicide	Temephos
000769–00678	Temexx 4EC Larvicide	Temephos
000769–00722	Temexx 5G Larvicide	Temephos
000769–00723	Temexx 1G Larvicide	Temephos
000769–00725	Temexx 2G Larvicide	Temephos
000769–00990	Temephos Technical	Temephos
008329–00015	5% Skeeter Abate	Temephos
008329–00016	Clarke Abate 2–BG	Temephos
008329–00017	Clarke 1% Skeeter Abate	Temephos
008329–00030	Clarke Abate 5% Tire Treatment	Temephos
008329–00056	Abate Insecticide MUP	Temephos
008329–00060	Abate 4E Insecticide	Temephos
008329–00069	Abate 4E Insecticide—For Use Only in California	Temephos
008329–00070	5% Skeeter Abate—For Use Only in California	Temephos
008329–00071	Abate 2 BG—For Use Only in California	Temephos
FL070008	Abate 4E Insecticide	Temephos
FL080015	Allpro Provect 4E Larvicide	Temephos

TABLE 3—METHYL BROMIDE AND METAM-SODIUM PRODUCT CANCELLATIONS

EPA Reg. No.	Product name	Active ingredients
005481–00467	Vapam Soil Fumigant Solution	Metam-sodium
005785–00004	Brom-O-Gas	Methyl bromide
008622–00005	Ameribrom Methyl Bromide—Grain Fumigant	Methyl bromide
008622–00006	Metabrom 98	Methyl bromide

TABLE 3—METHYL BROMIDE AND METAM-SODIUM PRODUCT CANCELLATIONS—Continued

EPA Reg. No.	Product name	Active ingredients
008622–00014	70–30 Soil Fumigant	Methyl bromide
008622–00017	Metabrom 99	Methyl bromide
051036–00060	Fume V Soil Fumigant	Metam-sodium
AZ900003	Brom-O-Gas 2% Chloropicrin	Methyl bromide
AZ900008	Brom-O-Gas	Methyl bromide
FL970009	Terr-O-Gas 67	Methyl bromide Chloropicrin
FL970010	Terr-O-Gas 98 Preplant Soil Fumigant	Methyl bromide Chloropicrin
HI910006	Terr-O-Gas 98 Preplant Soil Fumigant	Methyl bromide Chloropicrin

Table 4 of this unit includes the names and addresses of record for all registrants of the products in Tables 1, 2, and 3 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 4 —REGISTRANTS OF CANCELLED PRODUCTS

Company No.	Company name and address
192	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502.
228	Nufarm Americas Inc., 150 Harvester Drive, Suite 150, Burr Ridge, IL 60527.
239	The Scotts Company, 14111 Scottslawn Road, Marysville, OH 43041.
264	Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
432	Bayer Environmental Science, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
506	Walco Linck Company, 30856 Rocky Rd, Greeley, CO 80631–9375.
655	Prentiss, INC., 3600 Mansell Rd, Suite 350, Alpharetta, GA 30022.
769	Value Gardens Supply, LLC, P.O. Box 585, St. Joseph, MO 64502.
802	Lilly Miller Brands, P.O. Box 1019, Salem, VA 24153–3805.
1448	Buckman Laboratories Inc., 1256 North McLean Blvd, Memphis, TN 38108.
1663	Grant Laboratories, Inc., Registrations by Design, Inc., P.O. Box 1019, Salem, VA 24153.
1677	Ecolab Inc., 370 North Wabasha St., St. Paul, MN 55102.
1839	Stepan Company, 22 W. Frontage Rd, Northfield, IL 60093.
4822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660.
5741	Spartan Chemical Company, Inc., 1110 Spartan Drive, Maumee, OH 43537.
5785	Great Lakes Chem Corps, P.O. Box 2200, West Lafayette, IN 47996–2200.
8329	Clarke Mosquito Control Products, Inc. , P.O. Box 72197, Roselle, IL 60172.
8622	ICL-IP America, Inc., 95 MacCorkle Avenue, SW, South Charleston, WV 25303.
9688	Chemsico, Div of United Industries Corp, P.O. Box 142642, St Louis, MO 63114–0642.
9779	Agriliance, LLC, P.O. Box 64089, St. Paul, MN 55164–0089.
28293	Phaeton Corporation, Agent Registrations By Design, Inc, P.O. Box 1019 , Salem, VA 24153.
33753	BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
51036	BASF Sparks LLC, PO Box 13528, Research Triangle Park, NC 27709–3528.
53883	Control Solutions, Inc., 427 Hide Away Circle, Cub Run, KY 42729.
66330	Arysta Lifescience North America, LLC, 155401 Weston Parkway, Suite 150, Cary, NC 27513.
72155	Bayer Advanced, A Business Unit of Bayer Cropscience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
72642	Elanco Animal Health, A Division of Eli Lilly & Co., 4061 North 156th Drive, Goodyear, AZ 85338.
AL000001, AL050003, AL060003, AR000006, AR050009, CA000001, GA050006, LA050012, LA090005, MS000009, MS050018, SC050005, TX050004.	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
AZ900003, AZ900008, FL970009, FL970010, HI910006.	Great Lakes Chem Corps, P.O. Box 2200, West Lafayette, IN 47996–2200.
FL070008	Clarke Mosquito Control Products, Inc. , P.O. Box 72197, Roselle, IL 60172.
FL080015	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502.
MO990005	Missouri Aquaculture Association, P.O. Box 630, Jefferson City, MO 65102–6864.
MT050002, NY080011, IL100001	Prentiss, INC. , 3600 Mansell Rd, Suite 350, Alpharetta, GA 30022.
TX990012	Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.

III. Summary of Public Comments Received and Agency Response to Comments

Comments were received from the American Mosquito Control Association and the IR–4 Project on temephos. Both organizations emphasized the benefits of temephos as it is used in public health for mosquito control and requested that EPA extend the comment period for these product cancellations. However, the Agency recognizes the role of temephos in mosquito control and has agreed to a 4-year phase-out of the product registrations to

accommodate this need and allow registrants time to develop replacement products. The current temephos products would not be cancelled until December 30, 2015. For these reasons, the Agency does not believe that the comment period should be extended.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Tables 1, 2, and 3 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1, 2, and 3 of Unit II. are cancelled. The effective date of the cancellation of the products listed in Tables 1 and 3 of this notice is February 25, 2011. The effective date of the cancellation of the products listed in Table 2 is December 31, 2015. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 2, and 3 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notices of receipt for this action were published for comment in the **Federal Register** issues of November 10, 2010 (75 FR 69073) (FRL–8851–5) and November 17, 2010 (75 FR 70256) (FRL–8850–1). The comment periods closed on December 10, 2010 and December 17, 2010 respectively.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. For All Products Listed in Table 1 of Unit II

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until February 25, 2012, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. For All Products Listed in Table 2 of Unit II

After December 31, 2015, registrants are prohibited from selling or distributing existing stocks of products containing temephos labeled for all uses.

After December 31, 2016, persons other than registrants are prohibited from selling or distributing existing stocks of products containing temephos labeled for all uses.

After December 31, 2016, existing stocks of products containing temephos labeled for all uses, already in the hands of users can be used legally until they are exhausted, provided that such use complies with the EPA-approved label and labeling of the affected product.

C. For All Products Listed in Table 3 of Unit II

All sale or distribution by the registrant of existing stocks is prohibited after publication of the cancellation order in the **Federal Register**, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product.

Existing stocks may be sold and distributed by persons other than the registrant for 120 days from the effective date of the cancellation order.

Existing stocks may be used until exhausted, provided that such use complies with the EPA-approved label and labeling of the product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 8, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–4140 Filed 2–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA/100/R–11/001; FRL–9270–7]

Notice of Availability; Recommended Use of Body Weight$^{3/4}$ as the Default Method in Derivation of the Oral Reference Dose

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of "Recommended Use of Body Weight$^{3/4}$ as the Default Method in Derivation of the Oral Reference Dose" (referred to hereafter as BW$^{3/4}$). This document was developed as part of an Agency-wide guidance development program by a technical panel of the U.S. EPA's Risk Assessment Forum, composed of scientists from across the Agency. Selected drafts were peer reviewed internally by EPA scientists and externally by experts from academia, industry, environmental groups and other government agencies.

DATES: The document will be available for use by EPA risk assessors on February 25, 2011.

ADDRESSES: The Guidelines are available electronically through the EPA Web site at *http://www.epa.gov/raf/publications/interspecies-extrapolation.htm.* A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone (800) 490–9198 or (513) 489–8695; facsimile: (513) 489–8190. Please provide your name, mailing address and the title and number of the requested publication. Additionally, copies of the document will be available for inspection at EPA headquarters and regional libraries, through the U.S. Government Depository Library program.

FOR FURTHER INFORMATION CONTACT: Dr. Michael W. Broder, Risk Assessment Forum, Office of the Science Advisor (8105R), U.S. Environmental Protection Agency, Washington, DC 20460; telephone (202) 564–3393 or e-mail: *broder.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In order to assess the toxicity of a particular chemical in the absence of human data, EPA relies on the use of animal models as surrogates. EPA endorses a hierarchy of approaches to derive human equivalent oral exposures from data from laboratory animal species, with the preferred approach being physiologically based toxicokinetic

modeling. As a default method to account for differences in dosimetry between the animal models and humans, EPA previously applied a direct body-weight conversion from the model to humans (*i.e.,* $BW^{1/1}$) for non-cancer endpoints, in the absence of chemical-specific data. In contrast, EPA applies a dosimetric adjustment factor (DAF) based on body weight raised to the three-quarter power ($BW^{3/4}$) for cancer assessments. By adopting the adjustment, this document moves in the direction of harmonizing the approach for assessing cancer and noncancer endpoints.

In addition to laying out the computational method for interspecies extrapolation, the document also addresses the issue of changes to the interspecies uncertainty factor (UF_A). The document recommends a reduced interspecies UF_A (with a default value of 3) in lieu of a default of 10 for the reference dose (RfD) calculation. The quantitative significance of this procedure with regard to the magnitude of an RfD will depend on the body weight of the species (as well as the value assigned to the UF_A) and may be more or less than the current procedure of dividing by the default composite UF_A of 10.

$BW^{3/4}$ scaling for derivation of the human equivalent dose is recommended as the default approach for RfDs for remote, as well as portal-of-entry effects. It is noted that this scaling is not inclusive of lethal or frank effects for which maximum concentration (C_{max}) may be the most appropriate dose metric and that such effects are not among those effects recommended for use in deriving RfDs (USEPA, 2002). This default approach generally applies to different durations of exposure. The reader is encouraged to read the document carefully, however, in order to fully understand how to apply the policy appropriately. Additionally, although non-oral RfDs can be estimated (*e.g.,* a dermal RfD), this document focuses only on oral RfDs and for this document the acronym refers only to RfDs for oral exposure.

It is recognized that this procedure, as with all default procedures, may not always predict oral exposures associated with precise toxicologically-equivalent doses for specific chemicals. It should be emphasized that other biological information not discussed in this document may inform interspecies adjustments. As a general default procedure, however, it may be anticipated to provide a reasonable description of average behavior of many chemicals much of the time.

Even though this document is not a binding rule, EPA is issuing it in a manner consistent with the procedures in the Administrative Procedure Act that are generally applicable to rulemaking, including providing opportunity for public comment. EPA considered and responded to all significant public comments as it prepared the document.

Dated: February 16, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–4250 Filed 2–24–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 18, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 26, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1113.

Title: Commercial Mobile Alert System (CMAS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,253 respondents; 1,253 responses.

Estimated Time per Response: .5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d).

Total Annual Burden: 627 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection after this comment period to the Office of Management and Budget (OMB) to obtain the three year clearance from them. The Commission is reporting a 502 hour increase in the total annual burden. The Commission will submit this collection to the OMB as a revision.

This information collection is being submitted because, in the *Third Report and Order* in PS Docket No. 07–287, FCC 08–184, the Commission adopted rules that require Commercial Mobile Service (CMS) providers to collect information subject to the Paperwork Reduction Act. In the *Third Report and Order,* the Commission adopted rules obligating entities participating in the Commercial Mobile Alert System (CMAS) to provide written election of intent to participate in the CMAS.

All CMS providers are required to submit a CMAS election, including those that were not licensed at the time of the initial deadline for filing an

election with the FCC. In addition, any CMS provider choosing to withdraw its election must notify the Commission at least sixty (60) days prior to withdrawal of its election. The information collected will be the CMS provider's contact information and its election, *i.e.,* "yes" or "no", on whether it intends to provide commercial mobile service alerts.

The Commission will use this information collected to meets its statutory requirement under the WARN Act to accept licensees' election filings and to establish an effective CMAS that will provide the public with effective mobile alerts in a manner that imposes minimal regulatory burdens on affected entities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–4249 Filed 2–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/Address	Date reissued
004094NF	All Transport, Inc., 8369 NW. 66th Street, Miami, FL 33166	December 24, 2010.
004441N	Econoquality Freight Forwarders, Inc., dba EQ Line, 3201 NW. 116th Street, Suite B, Miami, FL 33167.	January 13, 2011.
020577N	Bosmak, Inc. dba Ocean Breeze Shipping, 2501 Harford Road, Baltimore, MD 21218	January 14, 2011.
021262NF	Amass International Group Inc., 13191 Crossroads Parkway North, Suite 385, City of Industry, CA 91746.	December 18, 2010.
021370NF	Encargo Export Corporation dba, Encargo Lines dba Encargo Logistics, 10800 NW. 103rd Street, Suite 5–E, Medley, FL 33178.	December 28, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–4206 Filed 2–24–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Acceleron Trade Services, Ltd. Co. (OFF), 500 Spring Hill Drive, #140, Spring, TX 77386, Officers: Wayne A. Krennerich, VP–Compliance/Operations, (Qualifying Individual), Kevin Alexander, President, Application Type: New OFF License.

AIT Ocean Systems, Inc. (OFF), 701 N. Rohlwing Road, Itasca, IL 60143, Officers: Jerome J. Walick, Vice President, (Qualifying Individual), Steven L. Leturno, Director, Application Type: QI Change.

Combined Freight System, Inc. (NVO), 2508 Royale Place, Fullerton, CA 92833, Officers: Yang S. Kwon, Secretary/Treasurer/CFO, (Qualifying Individual), Alex O. Kwon, President, Application Type: New NVO License.

CTC International Inc. (OFF), 293 Brea Canyon Road, Walnut, CA 91789, Officer: Lei Wang, Secretary/CFO/CEO, (Qualifying Individual), Application Type: Name Change/QI Change/Add NVO Service.

General Noli USA, Inc. dba General Freight (NVO & OFF), 148–08 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Wei Hu, Vice President, (Qualifying Individual), Gianluca Pirrotta, President, Application Type: QI Change.

GC Logistics, Inc. (NVO), 79301 Country Club Drive, #104, Bermuda Dunes, CA 92203, Officer: Geoffrey Carlin, President/Treasurer/Secretary, (Qualifying Individual), Application Type: New NVO License.

Gulf South Forest Products, Inc. (NVO), 3038 N. Federal Highway, Building L, Ft. Lauderdale, FL 33306, Officers: Sam Yohanan, CEO, (Qualifying Individual), Edouard Baussan, Shareholder, Application Type: New NVO License.

KCTC International (America), Inc. dba World Bridge Line dba Green Shipping, Inc. (NVO), 16012 S. Western Avenue, #302, Gardena, CA 90247, Officer: Byung H. Chung, CEO/President/CFO/Secretary, (Qualifying Individual), Application Type: Trade Name Change.

Novomarine Container Line LLC (NVO & OFF), 1647 Capesterre Drive, Orlando, FL 32824, Officers: Daniil B. Ruvinskiy, Manager, (Qualifying Individual), Aleksey Y. Demshin, Manager/Member, Application Type: New NVO & OFF License.

Overseas Moving Specialists, Inc. dba International Sea & Air (NVO), 115 Meacham Avenue, Elmont, NY 11003, Officers: Alon Aviani, Vice President, (Qualifying Individual), Brandon Reed, President, Application Type: New NVO License.

Pegasus3 Worldwide Logistics, LLC (NVO & OFF), 59 Grove Street, Stoughton, MA 02072, Officers: Soraya G. Bandeli, Member, (Qualifying Individual), Mary T. Steele, Member, Application Type: New NVO & OFF License.

Tri-Best Logistics, Inc. (NVO & OFF), 1484 E. Valencia Drive, Fullerton, CA 92831, Officers: Chris J. Yi, CFO/Secretary, (Qualifying Individual), Justin Lee, President, Application Type: QI Change.

Rite Way Shipping, Inc. dba RW Container Line (NVO), 6521 Arlington Boulevard, #210, Falls Church, VA 22042, Officer: Salima K. Elouadghiri, President/Secretary, (Qualifying Individual), Application Type: New NVO License.

Aeronet, Inc. dba Aeronet Worldwide (NVO & OFF), 42 Corporate Park, #150, Irvine, CA 92606–3103, Officers: Alex S. Pereira, Senior Vice President, (Qualifying Individual),

Anthony N. Pereira, Chairman, Application Type: Add OFF Service.

Germovi, Corporation (NVO & OFF), 10253 NW. 51st Terrace, Doral, FL 33178, Officers: German Montano, President/Treasurer, (Qualifying Individual), Ingrid T. Naranjo, Vice President/Secretary, Application Type: New NVO & OFF License.

AB Group Shipping, Corp (OFF), 6848 NW. 77th Court, Miami, FL 33166, Officers: Marcela A. Alonso, President, (Qualifying Individual), Rodrigo G. Prado, Vice President, Application Type: New OFF License.

KG & Don's Express Shipping Import Inc. (NVO & OFF), 491 East 165th Street, Bronx, NY 10456, Officers: Sampson S. Nyarko, President/CEO, (Qualifying Individual), Osei Nyarko, Treasurer, Application Type: New NVO & OFF License.

Hansa Meyer Global Transport USA, LLC (OFF), 712 Main Street, Suite 1820, Houston, TX 77002, Officers: Fritz Keller, Vice President/Marketing, (Qualifying Individual), Frank Scheibner, CEO/President/Secretary/Treasurer, Application Type: New OFF License.

Dated: February 18, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–4205 Filed 2–24–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 2739NF.
Name: Alison Transport, Inc.
Address: 1800–A Access Road, Oceanside, NY 11572.
Date Revoked: January 28, 2011.
Reason: Failed to maintain valid bonds.

License Number: 2763F.
Name: Logistics & Transportation Services Inc.
Address: 7150 Troy Hill Drive, Elkridge, MD 21075.
Date Revoked: January 21, 2011.
Reason: Surrendered license voluntarily.

License Number: 009852N.
Name: East-West Express, Inc. dba East West Line.
Address: 17100 Pioneer Blvd., Suite 345, Artesia, CA 90701.
Date Revoked: January 14, 2011.
Reason: Failed to maintain a valid bond.

License Number: 017089NF.
Name: Mohawk Customs & Shipping (Rochester), LLC dba Mohawk Global Logistics (ROC).
Address: 52 Marway Circle, Suite 1, Rochester, NY 14624.
Date Revoked: January 7, 2011.
Reason: Surrendered license voluntarily.

License Number: 017678N.
Name: Four Link International, Inc.
Address: 146–27 167th Street, Suite 100, Jamaica, NY 11434.
Date Revoked: January 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018491NF.
Name: Independent Brokerage, L.L.C. dba IBL Worldwide Express.
Address: 1001 Virginia Avenue, Suite 150, Atlanta, GA 30354.
Date Revoked: January 19, 2011.
Reason: Surrendered license voluntarily.

License Number: 019544NF.
Name: Japan Star America, Inc. dba Innex America.
Address: 550 E. Carson Plaza Drive, Suite 109, Carson, CA 90746.
Date Revoked: January 27, 2011.
Reason: Failed to maintain valid bonds.

License Number: 020056N.
Name: A.M.C. Shipping, LLC.
Address: 79 Edna Avenue, Bridgeport, CT 06610.
Date Revoked: January 15, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020259N.
Name: Unique Logistics International (LAX) Inc.
Address: 16330 Marquardt Avenue, Cerritos, CA 90703.
Date Revoked: January 18, 2011.
Reason: Surrendered license voluntarily.

License Number: 020600N.
Name: Noel N. Griffin dba Duncan International Shipping.
Address: 1082 Rogers Avenue, Brooklyn, NY 11226.
Date Revoked: January 22, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021165N.
Name: United Marine Management.
Address: 969 S. Village Oaks Drive, Suite 208, Covina, CA 91724.
Date Revoked: January 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021240N.
Name: Fusion Freight, Inc.
Address: 8181 NW 36th Street, Suite 13–C, Doral, FL 33166.
Date Revoked: January 29, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021268N.
Name: Scan Global Logistics, Inc.
Address: 768 South Central Avenue, Suite 200, Atlanta, GA 30354.
Date Revoked: January 15, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022436NF.
Name: RLE International, Inc.
Address: 8243 NW 66th Street, Miami, FL 33166.
Date Revoked: January 27, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021504F.
Name: Onward Shipping & Clearing Service Inc.
Address: 2305 Oak Lane, Suite 201B, Grand Prairie, TX 75051.
Date Revoked: January 10, 2011.
Reason: Surrendered license voluntarily.

License Number: 021894NF.
Name: Call Rapido, LLC.
Address: 9614 Pondwood Road, Boca Raton, FL 33428.
Date Revoked: January 18, 2011.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–4210 Filed 2–24–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Thursday, February 17, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission considered the following in a closed session: *Secretary of Labor on behalf of Mark Gray* v. *North Fork Coal Corporation,* Docket No. KENT 2009–1429–D. (Issues include whether the Commission should grant or deny a petition for reconsideration filed by the operator which addresses questions concerning the economic reinstatement of a miner.)

This meeting was closed to the public in accordance with the exemption in 5 U.S.C. 552b(c)(10) applicable to the consideration of a "particular case of formal agency adjudication." Commission members determined that public announcement of the closed meeting at an earlier time was not practicable.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean Ellen,

Federal Mine Safety & Health Review Commission.

[FR Doc. 2011–4349 Filed 2–23–11; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291

1. Robert Karl Kamp, Manhattan, Montana, to acquire control of Inter-Mountain Bancorp, Inc., and thereby indirectly acquire control of First Security Bank, both in Bozeman, Montana.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Eyak Corporation, Anchorage, Alaska, to acquire control of Native American Bancorporation Co., and thereby indirectly gain control of Native American Bank, National Association, both in Denver, Colorado.

Board of Governors of the Federal Reserve System, February 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–4287 Filed 2–24–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291.

1. Western State Agency, Inc., Employee Stock Ownership Plan and Trust, Devils Lake, North Dakota, to become a bank holding company by acquiring over 25 percent of the voting shares of Western State Agency, and thereby indirectly acquire Western State Bank, both in Devils Lake, North Dakota.

Board of Governors of the Federal Reserve System, February 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–4288 Filed 2–24–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bank of Montreal, Montreal, Canada, Harris Financial Corp., Wilmington, Delaware, Harris Bankcorp, Inc., Chicago, Illinois; and Mike Merger Sub, LLC, Chicago, Illinois; to acquire 100 percent of the voting shares of Marshall & Ilsley Corporation, Milwaukee, Wisconsin, and thereby indirectly acquire voting shares of M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin, and M&I Bank of Mayville, Mayville, Wisconsin. In connection with the applications, Applicants also have applied to acquire M&I Bank N.A.,

upon the conversion of M&I Bank FSB, Las Vegas, Nevada, from a federal savings bank to a national association. In connection with the applications, Mike Merger Sub, LLC, Chicago, Illinois, has also applied to become a bank holding company by acquiring 100 percent of the voting shares of Marshall & Ilsley Corporation, Milwaukee, Wisconsin. Applicants also have filed to exercise an option to acquire up to 19.7 percent of the outstanding stock of Marshall & Ilsley Corporation.

In connection with this application, Applicants also have applied to acquire M&I Investment Management Corp., Milwaukee, Wisconsin, and thereby engage in financial and investment advisory services and securities brokerage, pursuant to sections 225.28(b)(6) and (b)(7) of Regulation Y; TCH MI Holding Company, Inc., Milwaukee, Wisconsin, and thereby engage in financial and investment advisory services, pursuant to section 225.28(b)(6) of Regulation Y; Taplin, Canida & Habacht, LLC, Miami, Florida, and thereby engage in financial and investment advisory services, pursuant to section 225.28(b)(6) of Regulation Y; Marshall & Ilsley Trust Company National Association, Milwaukee, Wisconsin, and thereby engage in trust company functions, pursuant to section 225.28(b)(5) of Regulation Y; North Star Trust Company, Chicago, Illinois, and thereby engage in trust company functions, pursuant to section 225.28(b)(5) of Regulation Y; North Star Deferred Exchange Corp., Chicago, Illinois, and thereby engage in real estate settlement servicing; trust company functions; tax planning and tax preparation services, pursuant to sections 225.28(b)(2), (b)(5) and (b)(6) of Regulation Y; M&I Exchange Services LLC, Milwaukee, Wisconsin, and thereby engage in real estate settlement servicing; trust company functions; tax planning and tax preparation services, pursuant to sections 225.28(b)(2), (b)(5), and (b)(6) of Regulation Y; North Star Realty Services, LLC, Chicago, Illinois, and thereby engage in real estate settlement servicing; trust company functions; tax planning and tax preparation services, pursuant to sections 225.28(b)(2), (b)(5), and (b)(6) of Regulation Y; M&I Community Development Corp., Milwaukee, Wisconsin, and thereby engage in community development activities, pursuant to section 225.28(b)(12) of Regulation Y; M&I Bank FSB, Las Vegas, Nevada, and thereby operate a savings association pursuant to section 225.28(b)(4) of Regulation Y; M&I Zion Holdings, Inc., Las Vegas, Nevada, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y; and M&I Zion Investment II Corporation, Las Vegas, Nevada, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 18, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–4183 Filed 2–24–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC is soliciting public comments on proposed information requests to beverage alcohol manufacturers. These comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, of compulsory process orders to alcohol advertisers. The compulsory process orders will seek information from those companies concerning, among other things, compliance with voluntary advertising placement provisions, sales and marketing expenditures, the status of third-party review of complaints regarding compliance with voluntary advertising codes and alcohol industry data collection practices.

DATES: Comments on the proposed information requests must be received on or before April 26, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following Web link: *https://ftcpublic.commentworks.com/ftc/alcoholstudy2011pra* (and following the instructions on the Web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room HB113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Janet M. Evans, Attorney, 202–326–2125, or Carolyn L. Hann, Attorney, 202–326–2745, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

The FTC previously published reports on voluntary advertising self-regulation by the alcohol industry in September 1999, September 2003, and June 2008. The data contained in the reports was based on information submitted to the Commission, pursuant to compulsory process, by U.S. beverage alcohol advertisers. The FTC has authority to compel production of this information from advertisers under Section 6 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 46. The Commission believes that it is in the public interest to collect updated data from alcohol advertisers on sales and marketing expenditures, compliance with the industry's imposed self-regulatory codes concerning advertising placement, the status of third-party review of complaints regarding compliance with the industry's self-regulatory advertising standards, and alcohol industry data collection practices, and to publish a report on the data obtained.

Applicability of Paperwork Reduction Act

The Commission plans to address its information requests to the ultimate U.S. parent of alcohol advertisers in order to ensure that no relevant data from affiliated or subsidiary companies go unreported. Because the number of separately incorporated companies affected by the Commission's requests will presumably exceed ten entities, the Commission intends to seek OMB clearance under the Paperwork Reduction Act (PRA) before requesting any information from beverage alcohol advertisers. Under the PRA and implementing OMB regulations, federal agencies must obtain approval from OMB for each "collection of information" they conduct or sponsor if posed to ten or more entities within any twelve-month period. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3501(3); 5 CFR 1320.3(c).

Request for Comments

As required by Section 3506(c)(2) of the PRA, the FTC is providing this

opportunity for public comment before requesting that OMB approve the study. Specifically, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting 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. The FTC encourages recipients of prior compulsory process orders to offer suggestions on how the burden of the proposed collection may be reduced. All comments should be filed as prescribed below, and must be received on or before April 26, 2011.

Please also note that because your comment will be made public, you are solely responsible for ensuring that it does not include any sensitive personal information, such as any individual's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. It is also your own responsibility to ensure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. Your comment also should not include any "[t]rade secret or any commercial or financial information * * * which is privileged or confidential." *See* Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). No comment, whether it contains such material or not, will be given confidential treatment unless the comment has been filed with the FTC Secretary; the comment is accompanied by a written confidentiality request that complies fully with FTC Rule 4.9(c), 16 CFR 4.9(c);[1] and the General Counsel, in his or her sole discretion, has determined to grant the request in accordance with applicable law and the public interest.

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comment in electronic form. Comments filed in electronic form should be submitted by using the following Web link: *https://ftcpublic.commentworks.com/ftc/alcoholstudy2011pra* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link: *https://ftcpublic.commentworks.com/ftc/alcoholstudy2011pra.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the "Alcohol Reports: Paperwork Comment; Project No. P114503" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to the ultimate U.S. parent companies of up to fourteen advertisers of beer, wine, or distilled spirits ("industry members"). The requests will seek, among other information, data regarding: (1) Sales of beverage alcohol; (2) expenditures to advertise and promote beverage alcohol in measured and non-measured media; (3) compliance with the 70% legal drinking age audience composition advertising placement standard contained in the industry's self-regulatory codes; (4) third-party or other external compliance review mechanisms; and (5) data collection efforts, including data collection in connection with digital and social media marketing, and efforts to avoid collection of data from youth under the legal drinking age of 21, to the extent industry members possess such data.

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership, or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. 50; *see also* 18 U.S.C. 1505.

Estimated Hours Burden: 11,760 hours.

The staff's estimate of the hours burden is based on the time required to respond to each information request. Because beverage alcohol companies vary in size, the number of products they sell, and the extent and variety of their advertising and promotion efforts, the staff has provided a range of the estimated hours burden. As noted above, each company will receive information requests pertaining to five categories of information.

Based upon its knowledge of the industry, the staff estimates, on average, that the time required to gather, organize, format, and produce responses to categories (1), (2), (4), and (5) will range between 20 and 130 hours for most companies, but that the largest companies could require as many as 560 hours for the most time-consuming category, *i.e.,* category (3) (placement information). The total estimated burden per company is based on the following assumptions:

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

(1) Identify, obtain, and organize sales information, prepare response:	30–70 hours
(2) Identify, obtain, and organize information on advertising and marketing expenditures, prepare response:	50–130 hours
(3) Identify, obtain, and organize placement information, prepare response:	240–560 hours
(4) Identify, obtain, and organize information regarding compliance review, prepare response:	20–40 hours
(5) Identify, obtain, and organize information regarding data collection, prepare response:	20–40 hours

The staff anticipates that the cumulative hours burden to respond to the information requests will be between 360 and 840 hours per company. Nonetheless, in order to be conservative, the staff estimates that the burden per company for each of up to fourteen intended recipients will be 840 hours. Accordingly, the staff estimates a total burden for these companies of approximately 11,760 hours (14 companies × 840 average burden hours per company). These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

Estimated Cost Burden: $252,000.

It is difficult to calculate with precision the labor costs associated with the information requests, as the costs entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The staff has assumed that professional personnel and outside legal counsel will handle most of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of $300/hour for their labor. Thus, the staff estimates that the total labor costs per company will range between $108,000 ($300 × 360 hours) and $252,000 ($300 × 840 hours).

The staff estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–4196 Filed 2–24–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; Recommendations Received From the HIT Policy Committee

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Section 3002(e) of the Public Health Service Act, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, requires the National Coordinator for Health Information Technology to publish in the **Federal Register** and post on the internet all policy recommendations made by the HIT Policy Committee.

Policy recommendations presented at the February 2, 2011 HIT Policy Committee meeting have been transmitted from the HIT Policy Committee to the National Coordinator and are available on the ONC Web site: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__policy_recommendations/1815.*

Dated: February 14, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–4290 Filed 2–24–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2326–FN]

Medicare and Medicaid Programs; Approval of the Joint Commission for Deeming Authority for Psychiatric Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Joint Commission for recognition as a national accreditation program for psychiatric hospitals seeking to participate in the Medicare or Medicaid programs. This initial 4-year approval is effective February 25, 2011, through February 25, 2015.

DATES: *Effective Date:* This final notice is effective February 25, 2011.

FOR FURTHER INFORMATION CONTACT: L. Tyler Whitaker, (410) 786–5236; Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a psychiatric hospital provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. The regulations at 42 CFR part 482, subpart E specify, among other things, the conditions that a psychiatric hospital must meet to participate in the Medicare program. Regulations concerning provider agreements are located at 42 CFR part 489 and those pertaining to survey and certification of facilities are at 42 CFR part 488.

Generally, in order to enter into a provider agreement, a psychiatric hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in section 1861(f) of the Act, and 42 CFR part 482, including the special provisions applying to psychiatric hospitals in subpart E of our regulations. Thereafter, the psychiatric hospital is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Accreditation by a nationally-recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization (AO) that all applicable Medicare conditions are met or exceeded, we may "deem" that provider entity as having met the requirements. Accreditation by an AO is

voluntary and is not required for Medicare participation. A national AO applying for deeming authority under 42 CFR part 488, subpart A must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

II. Deeming Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for deeming authority is conducted in a timely manner. The statute provides 210 calendar days after the date of receipt of a complete application, with any documentation necessary to make a determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice and Response to Comments

In the October 22, 2010 **Federal Register** (75 FR 65360), we published a proposed notice announcing the Joint Commission's request for approval as a deeming organization for psychiatric hospitals. In that notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of the Joint Commission's application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

- An onsite administrative review of the Joint Commission's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of the Joint Commission's psychiatric hospital accreditation standards to our current Medicare psychiatric hospital conditions of participation (CoPs).
- A documentation review of the Joint Commission's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and the Joint Commission's ability to provide continuing surveyor training.

+ Compare the Joint Commission's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate the Joint Commission's procedures for monitoring psychiatric hospitals determined to be out of compliance with the Joint Commission's program requirements. The monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ Assess the Joint Commission's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish the Joint Commission's ability to provide us with electronic data and reports necessary for effective validation and assessment of the Joint Commission's survey process.

+ Determine the adequacy of staff and other resources.

+ Review the Joint Commission's ability to provide adequate funding for performing required surveys.

+ Confirm the Joint Commission's policies with respect to whether surveys are announced or unannounced.

+ Obtain the Joint Commission's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the October 22, 2010 proposed notice also solicited public comments regarding whether the Joint Commission's requirements met or exceeded the Medicare CoPs for psychiatric hospitals. We received 4 comments in response to our proposed notice.

All of the commenters expressed strong support for the Joint Commission's application for psychiatric hospital deeming authority. The commenters stated that the Joint Commission's standards are clearly written and closely align with the Medicare CoPs, and that the Joint Commission's accreditation program provides psychiatric hospitals with a viable alternative to other healthcare accreditation organizations.

IV. Provisions of the Final Notice

A. Differences Between the Joint Commission's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the Joint Commission's psychiatric hospital accreditation requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of the Joint Commission's deeming application, which were conducted as described in section III. of this final notice, yielded the following:

- To meet the requirements at Appendix AA of the SOM, the Joint Commission revised its policies to ensure surveyors draw a representative number of patients from each distinct program area for observation and interview based on the size of that program.
- To meet the requirements at § 482.13(e), the Joint Commission revised its crosswalk to address the requirement that all patients have the right to be free from physical or mental and corporal punishment.
- To meet the requirements at § 482.24(b)(2), the Joint Commission revised its standards to address the requirement that the medical record system must allow for timely retrieval of patient information by diagnosis and procedure.
- To meet the requirements at § 482.26(b)(1), the Joint Commission revised its crosswalk to ensure the hospital maintains proper safety precautions against radiation hazards.
- To meet the requirements at § 482.41(a), the Joint Commission modified its standards to prevent hospitals from conducting back-to-back emergency preparedness response drills.
- To meet the requirements at § 482.41(a)(1), the Joint Commission revised its standards to include all of the essential electrical system specific requirements, per National Fire Protection Association (NFPA) 99:1999: 12–3.3 and corresponding Chapter 3 requirements.
- To meet the requirements at § 482.41(b)(1)(i), the Joint Commission revised its standards to address the availability of the fire safety plan, and ensure that all required fire safety elements are addressed. In addition, the Joint Commission revised its standards to require quarterly testing of tamper and water flow devices, and ensure no gaps exist around penetrations.
- To meet the requirements at § 482.41(b)(9)(i) through (iii) and § 482.41(b)(9)(v), the Joint Commission

revised its Web site to ensure it includes all of the alcohol-based hand rub dispenser requirements.

- To meet the requirements at § 482.45(b)(3), the Joint Commission revised its standards to address the hospital's responsibility to provide organ transplant data directly to the Department of Health and Human Services when requested by the Secretary.
- To meet the requirements at § 482.56, the Joint Commission revised its crosswalk to ensure that if the hospital provides rehabilitation, physical therapy, occupational therapy, audiology, or speech pathology services, the services are organized and staffed to ensure the health and safety of patients.
- To meet the requirements at § 482.61(a)(3), the Joint Commission revised its standards to ensure psychiatric hospitals clearly document the reason for admission as stated by the patient and/or others significantly involved in the patient's care.
- To meet the requirements at § 482.61(a)(5), the Joint Commission revised its standards to address the requirement that, when indicated, a complete neurological examination be recorded at the time of the admission physical examination.
- To meet the requirements at § 482.61(c)(1)(ii), the Joint Commission revised its standards to include both short-term and long-range patient goals.
- To meet the requirements at § 482.61(c)(1)(iv), the Joint Commission revised its standards to ensure the patient's treatment plan includes the responsibilities of each member of the treatment team.
- To meet the requirements at § 482.62, the Joint Commission revised its crosswalk to address the psychiatric hospital's responsibility to formulate written, individualized, comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.
- To meet the requirements at § 482.62(f), the Joint Commission revised its standard to ensure that the hospital has a director of social services who monitors and evaluates the quality and appropriateness of social services furnished.
- The Joint Commission revised its psychiatric hospital survey procedures to ensure all applicable hospital CoPs at 42 CFR part 482 are adequately evaluated for compliance.

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that the Joint Commission's requirements for psychiatric hospitals meet or exceed our requirements. Therefore, we approve the Joint Commission as a national accreditation organization for psychiatric hospitals that request participation in the Medicare program effective February 25, 2011 through February 25, 2015.

V. 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).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 18, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–4294 Filed 2–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1347–N]

Medicare Program; Public Meeting in Calendar Year 2011 for New Clinical Laboratory Tests Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for a specified list of new Clinical Procedural Terminology (CPT) codes for clinical laboratory tests in calendar year (CY) 2012. The meeting provides a forum for interested parties to make presentations and submit written comments on the new codes that will be included in Medicare's Clinical Laboratory Fee Schedule for CY 2012, which will be effective on January 1, 2012. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be further discussed at the meeting.

DATES: *Meeting Date:* The public meeting is scheduled for Monday, July 18, 2011 from 9 a.m. to 2 p.m., Eastern Standard Time (E.S.T.).

Deadline for Registration of Presenters: All presenters for the public meeting must register by July 11, 2011.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than 5 p.m., E.S.T. on July 11, 2011.

Deadline for Submission of Written Comments: Interested parties may submit written comments on the proposed payment determinations by September 23, 2011, to the address specified in the **ADDRESSES** section of this notice. We note that comments submitted should pertain to the payment basis for a specified list of new Clinical Procedural Terminology (CPT) codes.

ADDRESSES: The public meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new clinical laboratory tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub.

L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedure for determining the basis for, and amount of, payment for any clinical diagnostic laboratory tests with respect to which a new or substantially revised Healthcare Common Procedures Coding System (HCPCS) code is assigned on or after January 1, 2005 (hereinafter referred to as, "new test" or "new clinical laboratory test"). Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Pertinent to this notice, section 1833(h)(8)(B)(i) and section 1833(h)(8)(B)(ii) of the Act requires the Secretary to make available to the public a list that includes new tests for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, to publish in the **Federal Register** a notice of a meeting to receive comments and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for new tests. Section 1833(h)(8)(B)(iii) of the Act requires that we convene a public meeting not less than 30 days after publication of the notice in the **Federal Register**. These requirements are codified at 42 CFR part 414, subpart G.

A newly created Current Procedural Terminology (CPT) code can represent either a refinement or modification of existing test methods, or a substantially new test method. The preliminary list of newly created CPT codes for calendar year (CY) 2012 will be published on our Web site as soon as possible at *http://www.cms.hhs.gov/ClinicalLabFeeSched*.

Two methods are used to establish payment amounts for new tests included in the CY 2012 Clinical Laboratory Fee Schedule. The first method called "cross-walking" is used when a new test is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is then assigned to the related existing local fee schedule amounts and the related existing national limitation amount. Payment for the new test is made at the lesser of the local fee schedule amount or the national limitation amount. We refer readers to § 414.508(a).

The second method called "gap-filling" is used when no comparable existing test is available. When using this method, instructions are provided to each Medicare carrier or Part A and Part B Medicare Administrative Contractor (MAC) to determine a payment amount for its geographic area(s) for use in the first year. These determinations are based on the following sources of information, if available: Charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. The carrier-specific amounts are used to establish a national limitation amount for the following years. We refer readers to § 414.508(b). For each new clinical laboratory test code, a determination must be made to either cross-walk or gap-fill.

II. Format

This meeting to receive comments and recommendations (including accompanying data on which recommendations are based) on the appropriate payment basis for the specified list of new CPT codes is open to the public. The on-site check-in for visitors will be held from 8:30 a.m., E.S.T. to 9 a.m., E.S.T., followed by opening remarks. Registered persons from the public may discuss and recommend payment determinations for specific new test codes for the CY 2012 Clinical Laboratory Fee Schedule.

Presentations must be brief and accompanied by three written copies. CMS recommends that presenters make copies available for approximately 50 meeting participants, since CMS will not be providing additional copies. Presentations must also be electronically submitted to CMS on or before July 1, 2011. Presentations should be sent via e-mail to Glenn McGuirk, at *Glenn.McGuirk@cms.hhs.gov.* Once the presentations are collected, CMS will post them on the Clinical Laboratory Web site at *http://www.cms.hhs.gov/ClinicalLabFeeSched.* Presenters should address the following items:

- New test code(s) and descriptor.
- Test purpose and method.
- Costs.
- Charges.
- Make a recommendation with rationale for one of two methods (cross-walking or gap-fill) for determining payment for new tests.

Additionally, the presenters should provide the data on which their recommendations are based. Presentations that do not address the above 5 items may be considered incomplete and may not be considered by CMS when making a payment determination. CMS may request missing information following the meeting in order to prevent a recommendation from being considered incomplete.

A summary of the proposed new test codes and the payment recommendations that are presented during the public meeting will be posted on the CMS Web site by early September 2011 and can be accessed at *http://www.cms.hhs.gov/ClinicalLabFeeSched.* The summary on the CMS website will include a list of all comments received by August 8, 2011 (15 business days after the meeting). The summary will also include our proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations. Interested parties may submit written comments on the proposed payment determinations by September 23, 2011, to the address specified in the **ADDRESSES** section of this notice. Final payment determinations will be posted on our website in October 2011. Each determination will include a rationale, data on which the determination is based, and responses to comments and suggestions received from the public.

After the final payment determinations have been posted on our Web site, the public may request reconsideration of the basis for and amount of payment for a new test as set forth in § 414.509. We also refer readers to the November 27, 2007 final rule (72 FR 66275 through 66280).

III. Registration Instructions

The Division of Ambulatory Services in CMS is coordinating the public meeting registration. Beginning June 20, 2011, registration may be completed on-line at the following Web address: *http://www.cms.hhs.gov/ClinicalLabFeeSched.* The following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Telephone number(s).
- E-mail address(es).

When registering, individuals who want to make a presentation must also specify on which new clinical laboratory test code(s) they will be presenting comments. A confirmation will be sent upon receipt of the registration. Individuals must register by the date specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. It is suggested that you arrive at the CMS facility between 8:15 a.m and 8:30 a.m., E.S.T. so that you will be able to arrive promptly at the meeting by 9 a.m., E.S.T. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 8:15 a.m., E.S.T. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building.

We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

V. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide the information upon registering for the meeting. The deadline for such registrations is listed in the **DATES** section of this notice.

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).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 18, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–4295 Filed 2–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1515–N]

Medicare Program; Public Meetings in Calendar Year 2011 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2011 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES: *Meeting Dates:* The following are the 2011 HCPCS public meeting dates:

1. Tuesday, May 17, 2011, 9 a.m. to 5 p.m. eastern daylight time (e.d.t.) (Drugs/Biologicals/ Radiopharmaceuticals/Radiologic Imaging Agents).
2. Wednesday, May 18, 2011, 9 a.m. to 5 p.m. e.d.t. (Drugs/Biologicals/ Radiopharmaceuticals/Radiologic Imaging Agents).
3. Tuesday, May 24, 2011, 9 a.m. to 5 p.m. e.d.t. (Supplies and Other).
4. Wednesday, May 25, 2011, 9 a.m. to 5 p.m. e.d.t. (Supplies and Other).
5. Tuesday, June 7, 2011, 9 a.m. to 5 p.m. e.d.t. (Orthotics and Prosthetics).
6. Wednesday, June 8, 2011, 9 a.m. to 5 p.m. e.d.t. (Durable Medical Equipment (DME) and Accessories).

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- May 3, 2011 for the May 17, 2011 and May 18, 2011 public meetings.
- May 10, 2011 for the May 24, 2011 and May 25, 2011 public meetings.
- May 24, 2011 for the June 7, 2011 and June 8, 2011 public meetings.

Deadline for Attendees that are Foreign Nationals (reside outside the U.S.) Registration: Attendees that are Foreign Nationals (reside outside the U.S.) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section IV. of this notice) to the public meeting coordinator at least 12 business days in advance of the date of the public meeting date the individual plans to attend. Therefore, the deadlines for attendees that are Foreign Nationals are as follows:

- April 29, 2011 for the May 17, 2011 and May 18, 2011 public meetings.
- May 6, 2011 for the May 24, 2011 and May 25, 2011 public meetings.
- May 19, 2011 for the June 7, 2011 and June 8, 2011 public meetings.

Deadlines for all Other Attendees Registration: All other individuals who plan to enter the building to attend the public meeting must register for each date that they plan on attending. The registration deadlines are different for each meeting. Registration deadlines are as follows:

- May 10, 2011 for the May 17, 2011 and May 18, 2011 public meeting dates.
- May 17, 2011 for the May 24, 2011 and May 25, 2011 public meeting dates.
- May 31, 2011 for the June 7, 2011 and June 8, 2011 public meeting dates.

Deadlines for Requesting Special Accommodations: Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services by the following deadlines:

- May 3, 2011 for the May 17, 2011 and May 18, 2011 public meetings.
- May 10, 2011 for the May 24, 2011 and May 25, 2011 public meetings.
- May 24, 2011 for the June 7, 2011 and June 8, 2011 public meetings.

Deadline for Submission of Written Comments: Written comments must be received by the date of the meeting at which the code request is scheduled for discussion.

ADDRESSES: *Meeting Location:* The public meetings will be held in the main auditorium of the central building of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments may either be e-mailed to *HCPCS@cms.hhs.gov* or sent via regular mail to Jennifer Carver or Sharon Ventura, HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration located at *http://www.cms.hhs.gov/medhcpcsgeninfo* or by contacting one of the following persons: Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov;* or Sharon Ventura at (410)786–1985 or *Sharon.Ventura@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov;* or Sharon Ventura at (410) 786–1985 or *Sharon.Ventura@cms.hhs.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the Healthcare Common Procedure Coding System (HCPCS) workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials a meeting speaker wishes us to consider. For this reason, our HCPCS Public Meeting Coordinators will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.
- E-mail address.
- Special needs information.

A CMS staff member will confirm your registration by e-mail.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the "primary speaker" for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes, and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice. The sum of all materials including the presentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit for relevant studies published between the application deadline and the public meeting date, in which case, we would like a copy of the complete publication as soon as possible. This exception applies only to the page limit and not the deadline submission.

The materials may be e-mailed or delivered by regular mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be e-mailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to provide 35 copies if materials are delivered by mail.

2. 5-Minute Speakers

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under "Deadlines for all Other Attendees Registration" in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

Public Meetings are scheduled far in advance of the influx of HCPCS applications each cycle. At the time they are scheduled we can only anticipate the number of applications that we receive in each category. As a result, we may not need the second day of Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents Public Meeting on Wednesday, May 18, 2011. We have scheduled this date tentatively. The Public Meeting Agendas published on CMS' HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo* will serve as final notification regarding whether a meeting will be held on Wednesday, May 18, 2011.

The product category reported by the applicant may not be the same as that assigned by us. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *http://www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and our preliminary decision will be posted on our HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the official HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo.* The document titled "Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)" will be made available on the HCPCS Web site at least 4 weeks before the first public meeting in 2011 for all new public requests for revisions to the HCPCS. Individuals who intend to provide a presentation at a public meeting need to familiarize themselves

with the HCPCS Web site and the valuable information it provides to prospective registrants. The HCPCS Web site also contains a document titled "Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures," which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS Web site also contains a document titled "HCPCS Decision Tree & Definitions" which illustrates, in flow diagram format, HCPCS coding standards as described in our Coding Procedures document.

A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2011.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants should arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

All primary speakers must register as provided under the section titled "Meeting Registration." Materials and writings that will be used in support of an oral presentation should be submitted to one of the HCPCS Public Meeting Coordinators.

The materials may be e-mailed or delivered by regular mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be e-mailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one "primary speaker" to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate the demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the "Meeting Registration" section of this notice and contact one of the HCPCS Public Meeting Coordinators, specified in the **ADDRESSES** section. Primary speakers must also separately register as primary speakers by the date specified in the **DATES** section of this notice.

C. "5-Minute" Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

Each primary speaker and 5-minute speaker must declare in their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held within the CMS Complex which is not open to the general public. Visitors to the complex are required to show a valid U.S. Government issued photo identification, preferably a driver's license, at the time of entry. Participants will also be subject to a vehicular search before access to the complex is granted. Participants not in possession of a valid identification or who are in possession of prohibited items will be denied access to the complex. Prohibited items on Federal Property include but are not limited to, alcoholic beverages, illegal narcotics, dogs or other animals except Seeing Eye dogs and other dogs trained to assist the handicapped, explosives, firearms or other dangerous weapons (including pocket knives). Once cleared for entry to the complex participants will be directed to parking by a security officer.

In order to ensure expedited entry into the building it is recommended that participants have their ID and a copy of their written meeting registration confirmation readily available and that they do not bring laptops or large/bulky items into the building. Participants are reminded that photography on the CMS complex is prohibited. CMS has also been declared a tobacco free campus and violators are subject to legal action. In planning arrival time, we recommend allowing additional time to clear security. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes before the convening of the meeting each day.

Guest access to the complex is limited to the meeting area, the main lobby, and the cafeteria. If a visitor is found outside of those areas without proper escort they may be escorted out of the facility. Also be mindful that there will be an opportunity for everyone to speak and we request that everyone waits for the appropriate time to present their product or opinions. Disruptive behavior will not be tolerated and may result in removal from the meetings and escort from the complex. No visitor is allowed to attach USB cables, thumb drives or any other equipment to any CMS information technology (IT) system or hardware for any purpose at anytime. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor or utilizing any removable media provided by a visitor.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special arrangements and approvals are required at least 2 weeks

prior to each public meeting in order to bring pieces of equipment or medical devices. These arrangements need to be made with the public meeting coordinator. It is possible that certain requests made in advance of the public meeting could be denied because of unique safety, security or handling issues related to the equipment. A minimum of 2 weeks is required for approvals and security procedures. Any request not submitted at least 2 weeks in advance of the public meeting will be denied.

CMS policy requires that every foreign visitor is assigned a host. The host/hosting official is required to inform the Division of Critical Infrastructure Protection (DCIP) at least 12 business days in advance of any visit by a foreign national visitor. Foreign National visitors will be required to produce a valid passport at the time of entry.

Attendees that are Foreign Nationals need to identify themselves as such, and provide the following information for security clearance to the public meeting coordinator by the date specified in the **DATES** section of this notice:

- Visitor's full name (as it appears on passport).
- Gender.
- Country of origin and citizenship.
- Biographical data and related information.
- Date of birth.
- Place of birth.
- Passport number.
- Passport issue date.
- Passport expiration date.
- Dates of visits.
- Company Name.
- Position/Title.

Authority: Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh).

Dated: February 10, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–3812 Filed 2–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Refugee Assistance Program Estimates: CMA—ORR–1.

OMB No.: 0970–0030.

Description:

The Refugee Assistance Program Estimates: ORR–1 form is the application for funding for the Refugee Cash and Medical Assistance program. Applicants for funding provide estimates of costs of the different components of the program—Refugee Cash Assistance, Refugee Medical Assistance, Health Screening, Services to Unaccompanied Refugee Minors, Administrative Cost of the Services to Unaccompanied Refugee Minors program, and Administrative Costs of the State Refugee Coordinator. Applicants also submit a narrative justification for their estimates. Applicants submit the form annually on August 15 of the fiscal year prior to the fiscal year for which funds are being requested. The form may be submitted through an On-Line Data Collection system or hard copy format. The Office of Refugee Resettlement uses the cost estimate data from the ORR–1 in determining and allocating quarterly awards of funds and in projecting full year costs of this program.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Refugee Assistance Program Estimates: ORR–1	46	1	2	92
Estimated Total Annual Burden Hours:				92

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 22, 2011.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–4278 Filed 2–24–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0597]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Index of Legally Marketed Unapproved New Animal Drugs for Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 28, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0620. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Index of Legally Marketed Unapproved New Animal Drugs for Minor Species—21 CFR Part 516 (OMB Control Number 0910–0620)—Extension

The Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats), as well as uncommon diseases in major animal species.

The MUMS Act created three new sections in the FD&C Act (sections 571, 572, and 573 (21 U.S.C. 360ccc, 360ccc–1, and 360ccc–2)). The final rule (72 FR 69108, December 6, 2007) (the December 2007 final rule) implements section 572 of the FD&C Act that provides for an index of legally marketed unapproved new animal drugs for minor species. Participation in any part of the MUMS program is optional so the associated paperwork only applies to those who choose to participate. The December 2007 final rule specifies, among other things, the criteria and procedures for requesting eligibility for indexing and for requesting addition to the index as well as the annual reporting requirements for index holders.

Under the new subpart C of part 516 (21 CFR part 516), § 516.119 provides requirements for naming a permanent-resident U.S. agent by foreign drug companies, and § 516.121 provides for informational meetings with FDA. Section 516.123 provides requirements for requesting informal conferences regarding Agency administrative actions and § 516.125 provides for investigational use of new animal drugs intended for indexing. Provisions for requesting a determination of eligibility for indexing can be found under § 516.129 and provisions for subsequent requests for addition to the index can be found under § 516.145. A description of the written report required in § 516.145 can be found under § 516.143. Under § 516.141 are provisions for drug companies to nominate a qualified expert panel as well as the panel's recordkeeping requirements. Section 516.141 also calls for the submission of a written conflict of interest statement to FDA by each proposed panel member. Index holders are able to modify their index listing under § 516.161 or change drug ownership under § 516.163. Requirements for records and reports are under § 516.165.

In the **Federal Register** of December 3, 2010 (75 FR 75481), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

Description of Respondents: Pharmaceutical companies that sponsor new animal drugs.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
516.119	2	1	2	1	2
516.121	30	2	60	4	240
516.123	3	1	3	8	24
516.125	2	3	6	20	120
516.129	30	2	60	20	1,200
516.141	20	1	20	16	320
516.143	20	1	20	120	2,400
516.145	20	1	20	20	400
516.161	1	1	1	4	4
516.163	1	1	1	2	2
516.165	10	2	20	8	160
Total					4,872

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	No. of record-keepers	Annual frequency per recordkeeper	Total annual records	Hours per recordkeeper	Total hours
516.141	30	2	60	0.5	30
516.165	10	2	20	1	20
Total					50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4219 Filed 2–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0623]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Voluntary Cosmetic Registration Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 28, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0027. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Voluntary Cosmetic Registration Program—21 CFR Parts 710 and 720 (OMB Control Number 0910–0027)—Revision

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) provides FDA with the authority to regulate cosmetic products in the United States. Cosmetic products that are adulterated under section 601 of the FD&C Act (21 U.S.C. 361) or misbranded under section 602 of the FD&C Act (21 U.S.C. 362) may not be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, the Agency has developed the Voluntary Cosmetic Registration Program (VCRP).

In 21 CFR part 710, FDA requests that establishments that manufacture or package cosmetic products register with the Agency on Form FDA 2511 entitled "Registration of Cosmetic Product Establishment." The term "Form FDA 2511" refers to both the paper and electronic versions of the form. The electronic version of Form FDA 2511 is available on FDA's VCRP Web site at *http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/VoluntaryCosmeticsRegistrationProgramVCRP/OnlineRegistration/default.htm.* FDA's online registration system, intended to make it easier to participate in the VCRP, was made available industrywide on December 1, 2005. The Agency strongly encourages electronic registration of Form FDA 2511 because it is faster and more convenient. A registering facility will receive confirmation of electronic registration, including a registration number, by e-mail, usually within 7 business days. The online system also allows for amendments to past submissions.

Because registration of cosmetic product establishments is not mandatory, voluntary registration provides FDA with the best information available about the locations, business trade names, and types of activity (manufacturing or packaging) of cosmetic product establishments. FDA places the registration information in a computer database and uses the information to generate mailing lists for distributing regulatory information and for inviting firms to participate in workshops on topics in which they may be interested. FDA also uses the information for estimating the size of the cosmetic industry and for conducting onsite establishment inspections. Registration is permanent, although FDA requests that respondents submit an amended Form FDA 2511 if any of the originally submitted information changes.

In part 720 (21 CFR part 720), FDA requests that firms that manufacture, pack, or distribute cosmetics file with the Agency an ingredient statement for each of their products. Ingredient statements for new submissions (§§ 720.1 through 720.4) are reported on Form FDA 2512, "Cosmetic Product Ingredient Statement," and on Form FDA 2512a, a continuation form. Amendments to product formulations (§ 720.6) also are reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, "Notice of Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§§ 720.3 and 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA's online filing system is available on FDA's VCRP Web site at *http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/VoluntaryCosmeticsRegistrationProgramVCRP/OnlineRegistration/default.htm.* The online filing system contains the electronic versions of Forms FDA 2512, 2512a, and 2514, which are collectively found within the electronic version of Form FDA 2512. The Agency strongly encourages electronic filing of Form FDA 2512 because it is faster and more convenient. A filer will receive confirmation of electronic filing by e-mail.

FDA places cosmetic product filing information in a computer database and uses the information for evaluation of cosmetic products currently on the market. Because filing of cosmetic product formulations is not mandatory, voluntary filings provide FDA with the best information available about cosmetic product ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. The information assists FDA scientists in evaluating reports of alleged injuries and adverse reactions from the use of cosmetics. The information also is used in defining and planning analytical and toxicological studies pertaining to cosmetics.

Information from the database is releasable to the public under FDA compliance with the Freedom of Information Act. FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry.

In the **Federal Register** of December 15, 2010 (75 FR 78257), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter, containing multiple comments in response to the notice.

(Comment 1) One comment was generally supportive of the necessity of the information collection and its practical utility.

(Response) FDA agrees that the VCRP provides the Agency with useful information about cosmetic product ingredients and the cosmetics industry.

(Comment 2) One comment stated that, to increase participation in the registration program, FDA should conduct an audit of the cosmetics industry to determine the current participation rate in the registration program and to estimate how many ingredients and products FDA receives into the database compared to the total produced.

(Response) FDA disagrees with the suggested audit of the cosmetics industry. Given that FDA does not have the statutory authority to make registration in the VCRP mandatory, and taking into consideration the cost of completing such a project, the audit would not be a wise use of Agency funds in the current economic environment.

(Comment 4) As another means of increasing participation in the registration program, one comment suggested that FDA launch a certification system where companies can indicate to consumers that they have participated in the VCRP.

(Response) FDA disagrees with the suggested certification program at this time. Before instituting such a program, FDA would need to conduct research to understand how consumers would interpret such a certification claim and would have to consider how the accuracy of such a claim would be enforced.

(Comment 5) One comment stated that FDA should permit companies that produce professional-use products to submit contact and ingredient information.

(Response) FDA disagrees with the suggested change to its registration program. Cosmetic products marketed in the United States are regulated by FDA in accordance with the requirements of the FD&C Act and, if offered for sale as consumer commodities, the Fair Packaging and Labeling Act (FPLA). The FPLA defines a consumer commodity as a product distributed through retail sales for consumption by individuals. Professional products used in salons, and free samples are not available through retail sale to consumers, so they are not considered to be in "commercial distribution". Because the VCRP program only applies to cosmetic products in commercial distribution as defined in the FPLA, FDA is unable to file professional cosmetic products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section or part	Form no.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Part 710 (registrations)	FDA 2511 [2]	135	1	135	0.2	27
720.1 through 720.4 (new submissions).	FDA 2512 [3]	141	31	4,371	0.33	1,442
720.6 (amendments)	FDA 2512	109	7	763	0.17	130
720.6 (notices of discontinuance).	FDA 2512	55	41	2,255	0.1	226
720.8 (requests for confidentiality).		1	1	1	2.0	2.0
Total						1,827

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The term "Form FDA 2511" refers to both the paper Forms FDA 2511 and electronic Form FDA 2511 in the electronic system known as the VCRP, which is available at *http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/VoluntaryCosmeticsRegistrationProgramVCRP/OnlineRegistration/default.htm.*

[3] The term "Form FDA 2512" refers to the paper Forms FDA 2512, 2512a, and 2514 and electronic Form FDA 2512 in the electronic system known as the VCRP, which is available at *http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/VoluntaryCosmeticsRegistrationProgramVCRP/OnlineRegistration/default.htm.*

FDA bases its estimate of the number of responses on submissions received from fiscal years 2005 to 2007. FDA bases its estimate of the hours per response upon information from cosmetic industry personnel and FDA experience entering data submitted on paper Forms 2511, 2512, 2512a, and 2514. FDA estimates that, annually, 135 establishments that manufacture or package cosmetic products will each submit 1 registration on Form FDA 2511, for a total of 135 annual responses. Each submission is estimated to take 0.2 hour per response for a total of 27 hours. FDA estimates that, annually, 141 firms that manufacture, pack, or distribute cosmetics will file 31 ingredient statements for new submissions on Forms FDA 2512 and FDA 2512a, for a total of 4,371 annual responses. Each submission is estimated to take 0.33 hour per response for a total of 1,442.43 hours, rounded to 1,442. FDA estimates that, annually, 109 firms that manufacture, pack, or distribute cosmetics will file 7 amendments to product formulations on Forms FDA 2512 and FDA 2512a, for a total of 763 annual responses. Each submission is estimated to take 0.17 hour per response for a total of 129.71 hours, rounded to 130. FDA estimates that, annually, 55 firms that manufacture, pack, or distribute cosmetics will file 41 notices of discontinuance on Form FDA 2514, for a total of 2,255 annual responses. Each submission is estimated to take 0.1 hour per response for a total of 225.50 hours, rounded to 226. FDA estimates that, annually, one firm will file one request for confidentiality. Each such request is estimated to take 2 hours to prepare for a total of 2.0 hours. Thus, the total estimated hour burden for this information collection is 1,827 hours.

This is a revision request in which the burden hours for the information collection request (ICR) under OMB control number 0910–0030, "Cosmetic Product Voluntary Reporting Program" are being consolidated under the ICR assigned OMB control number 0910–0027, "Voluntary Registration of Cosmetic Product Establishments," which expires February 28, 2011. The revised ICR for 0910–0027 has been renamed "Voluntary Cosmetic Registration Program." Upon approval of this revision request, the ICR for OMB control number 0910–0030 will be discontinued.

Dated: February 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4218 Filed 2–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–N–0237] (formerly 2006N–0061)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Charging for Investigational Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Charging for Investigational Drugs" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 2006 (71 FR 75168), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0651. The approval expires on December 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: February 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4217 Filed 2–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Tobacco Products Scientific Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Tobacco Products Scientific Advisory Committee. This meeting was announced in the **Federal Register** of January 26, 2011 (76 FR 4705). The amendment is being made to reflect a change in the *Date and Time, Agenda, Procedures,* and *Closed Committee Deliberations* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850, 1–877–287–1373 (choose option 4), e-mail: *TPSAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 26, 2011, FDA announced that a meeting of the Tobacco Products Scientific Advisory Committee would be held on March 1 and 2, 2011. On page 4075, in the third column, the *Date and Time* portion of the document is changed to read as follows:

Date and Time: The meeting will be held on March 2, 2011, from 8 a.m. to 5 p.m.

On page 4076, in the first column, the *Agenda* portion is changed to read as follows:

Agenda: On March 2, 2011, the Committee will continue to: (1) Receive updates from the Menthol Report Subcommittee and (2) receive and discuss presentations regarding the data requested by the Committee at the March 30 and 31, 2010, meeting of the Tobacco Products Advisory Committee.

On page 4076, in the first column, the *Procedure* portion is changed to read as follows:

Procedure: On March 2, 2011, from 10:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 15, 2011. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. on March 2, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 8, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 9, 2011.

On page 4076, in the second column, the *Closed Committee Deliberations* portion is changed to read as follows:

Closed Committee Deliberations: On March 2, 2011, from 8 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). This portion of the meeting must be closed because the Committee will be discussing confidential data provided by the Federal Trade Commission (FTC) and the tobacco industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: February 18, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–4191 Filed 2–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–290B, Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–290B, Notice of Appeal to the Office of Administrative Appeals (AAO); OMB Control No. 1615–0095.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 16, 2010, at 75

FR 70016, allowing for a 60-day public comment period. USCIS received one comment for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 28, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail, please make sure to add OMB Control Number 1615–0095 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more 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, including whether the information will have practical utility;

(2) 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;

(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, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Appeal to the Office of Administrative Appeals (AAO).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–290B. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on the Form I–290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meets eligibility requirements, and for the Administrative Appeals Office to adjudicate the merits of the appeal or motion to reopen or reconsider.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 28,734 responses at 1 hour and 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 43,101 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: February 23, 2011.

Stephen Tarragon,

Senior Analyst, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4358 Filed 2–24–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Smith, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions

for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Air Force: Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; Coast Guard: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; Navy: Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: February 17, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 02/25/2011

Suitable/Available Properties

Building

California

Facility 1
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830012
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830014
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830015
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830016
Status: Unutilized
Comments: 16566 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830017
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facility 4
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830018
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830019
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Colorado

Bldg. 810—Trailer
270 South Aspen Street
Buckley AFB
Aurora CO
Landholding Agency: Air Force
Property Number: 18201110005
Status: Unutilized
Comments: Off-site removal only; 1,768 sq. ft; current use: pilot crew qtrs., fair conditions—$5,000 (estimated in repairs)

Bldg 811—Crews Trailer
272 South Aspen Street
Buckley AFB
Aurora CO 80011
Landholding Agency: Air Force
Property Number: 18201110008
Status: Unutilized
Comments: Off-site removal only, 2340 sq. ft., current use; pilot crew qtrs., fair conditions—estimated $5,000 in repairs

Georgia

Fed. Bldg. Post Office/Court
404 N. Broad St.
Thomasville GA 31792
Landholding Agency: GSA
Property Number: 54201110006
Status: Surplus
GSA Number: 4–G–GA–878AA
Comments: 49,366 total sq. ft., Postal Svc currently occupies 11,101 sq. ft. through Sept. 30, 2012. Current usage: gov't offices, asbestos has been identified as well as plumbing issues.

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Maine

Bldgs 1, 2, 3, 4
OTH–B Radar Site
Columbia Falls ME
Landholding Agency: Air Force
Property Number: 18200840009
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

Suitable/Available Properties

Land

Mississippi

Land
Vicksburg MS 39180
Landholding Agency: GSA
Property Number: 54201110007
Status: Excess
GSA Number: 4–D–MS–0568–AA
Comments: 11 acres, unpaved w/radio tower on the land, current use: communications, Warren Co. currently holds the license until 08/31/2014 however, revocable by the Sect. of Army

Building

New York

Bldg. 240
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comments: 39,108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comments: 13,199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comments: 4,000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comments: 10,288 sq. ft., presence of asbestos, most recent use—communications facility

South Carolina

256 Housing Units
Charleston AFB
South Side Housing
Charleston SC
Landholding Agency: Air Force
Property Number: 18200920001
Status: Excess
Comments: various sq. ft., presence of asbestos/lead paint, off-site use only

Suitable/Available Properties

Land

California

Parcels L1 & L2
George AFB
Victorville CA 92394
Landholding Agency: Air Force
Property Number: 18200820034
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Missouri

Communications Site
County Road 424
Dexter MO
Landholding Agency: Air Force
Property Number: 18200710001
Status: Unutilized
Comments: 10.63 acres

Outer Marker Annex
Whiteman AFB
Knob Noster MO 65336
Landholding Agency: Air Force
Property Number: 18200940001
Status: Unutilized
Comments: 0.75 acres, most recent use—communication

FAA
North Congress Ave & 110th St.
Kansas City MO 64153
Landholding Agency: GSA
Property Number: 54201110005
Status: Surplus
GSA Number: 7–U–MO–0688
Comments: 123 acres, legal constraint: utility easement only, current use: vacant land

North Carolina

0.14 acres
Pope AFB
Pope AFB NC
Landholding Agency: Air Force
Property Number: 18200810001
Status: Excess
Comments: most recent use—middle marker, easement for entry

0.13 acres
DYAB, Dyess AFB
Tye TX 79563
Landholding Agency: Air Force
Property Number: 18200810002
Status: Unutilized
Comments: most recent use—middle marker, access limitation

Suitable/Unavailable Properties

Building

Washington

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comments: 1996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comments: 2134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comments: 142 sq. ft., possible asbestos/lead paint, most recent use—residential

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comments: 1620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comments: 2850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comments: 2574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comments: 2451 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comments: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comments: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

Suitable/Unavailable Properties

Land

South Dakota

Tract 67
Ellsworth AFB
Box Elder SD 57706
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comments: 121 acres, bentonite layer in soil, causes movement

Unsuitable Properties

Building

Alabama

15 Bldgs.
Dauphin Island
Mobile AL
Landholding Agency: Coast Guard
Property Number: 88200930002
Status: Underutilized
Reasons: Secured Area

Alaska

Bldg. 9485
Elmendorf AFB
Elmendorf AK
Landholding Agency: Air Force
Property Number: 18200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 70500
Seward AFB
Seward AK 99664
Landholding Agency: Air Force
Property Number: 18200820001
Status: Unutilized
Reasons: Secured Area

Bldg. 3224
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18200820002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1437, 1190, 2375
Eielson AFB
Eielson AK

Landholding Agency: Air Force
Property Number: 18200830001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

5 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830002
Status: Unutilized
Directions: 3300, 3301, 3315, 3347, 3383
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830003
Status: Unutilized
Directions: 4040, 4332, 4333, 4480
Reasons: Extensive deterioration, Secured Area

Bldgs. 6122, 6205
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 8128
Elmendorf AFB
Elmendorf AK 99506
Landholding Agency: Air Force
Property Number: 18200830005
Status: Underutilized
Reasons: Secured Area

Bldgs. 615, 617, 751, 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18200920015
Status: Unutilized
Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldgs. 100, 101
Point Barrow Long Range
Radar Site
Point Barrow AK
Landholding Agency: Air Force
Property Number: 18201010001
Status: Unutilized
Reasons: Within airport runway clear zone, Within 2000 ft., of flammable or explosive material

Bldg. 100 and 101
Long Range Radar Site
Point Barrow AK
Landholding Agency: Air Force
Property Number: 18201020003
Status: Unutilized
Reasons: Within airport runway clear zone, Within 2000 ft., of flammable or explosive material

7 Bldgs.
Eareckson Air Station
Eareckson AK 99546
Landholding Agency: Air Force
Property Number: 18201020004
Status: Unutilized
Directions: 132, 152, 153, 750, 3013, 3016, and 4012
Reasons: Within airport runway clear zone, Extensive deterioration, Secured Area

33 Bldgs.
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201040005
Status: Excess
Directions: 5136, 5137, 5138, 5139, 5140, 5141, 5142, 5143, 5144, 5161, 5162, 5163, 5183, 5184, 5185, 5186, 5196, 5197, 5211, 5255, 5256, 5257, 5259, 5260, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5268
Reasons: Extensive deterioration, Secured Area

Bldg. S14
U.S. Coast Guard Base Support Unit Kodiak
Kodiak AK
Landholding Agency: Coast Guard
Property Number: 88201110002
Status: Excess
Reasons: Extensive deterioration

Arizona

Railroad Spur
Davis-Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18200730002
Status: Excess
Reasons: Within airport runway clear zone

Arkansas

Military Family Housing, 2 Bldgs.
Eielson AFB
Eielson AR 99702
Landholding Agency: Air Force
Property Number: 18201110007
Status: Excess
Directions: Bldgs: 5258 & 5198
Reasons: Extensive deterioration

California

Garages 25001 thru 25100
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00275
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200730003
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740002
Status: Unutilized
Reasons: Secured Area

Bldg. 5308
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 100
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200810004
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 1952, 1953, 1957, 1958
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820007
Status: Unutilized
Reasons: Secured Area

Bldgs. 1992, 1995
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820008
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Pt. Arena AF Station
101, 102, 104, 105, 108
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820019
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 160, 161, 166
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820020
Status: Excess
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820021
Status: Excess
Directions: 201, 202, 203, 206, 215, 216, 217, 218
Reasons: Secured Area, Extensive deterioration

7 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820022
Status: Excess
Directions: 220, 221, 222, 223, 225, 226, 228
Reasons: Secured Area, Extensive deterioration

Bldg. 408
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820023
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 601 thru 610

Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820024
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 611–619
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 620 thru 627
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820026
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 654, 655, 690
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820027
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 300, 387
Pt Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820029
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 700, 707, 796, 797
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820030
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 748, 838
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820033
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930001
Status: Unutilized
Directions: 355, 421, 1062, 1088, 1250, 1280
Reasons: Extensive deterioration

7 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930002
Status: Unutilized
Directions: 2160, 2171, 2340, 2432, 2491, 2560, 5800
Reasons: Extensive deterioration

8 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940003
Status: Unutilized
Directions: 182, 575, 578, 580, 582, 583, 584, 589
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940004
Status: Unutilized
Directions: 590, 596, 598, 599
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940005
Status: Unutilized
Directions: 708, 742, 955, 1836, 13403
Reasons: Secured Area, Extensive deterioration

14 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940006
Status: Unutilized
Directions: 4158, 3936, 3942, 3947, 4314, 4318, 4256, 4120, 4103, 3871, 3873, 3887, 3919, 4133
Reasons: Extensive deterioration

Bldgs. 4320, 800
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940007
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940008
Status: Unutilized
Directions: 4136, 5223, 5228, 5278
Reasons: Extensive deterioration

4 Bldgs.
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18201010002
Status: Unutilized
Directions: 1892, 9340, 13400, 21110
Reasons: Secured Area

Bldgs. 1154, 2459, 5114
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201010004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 591, 970, 1565
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18201020005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1213
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201030002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 7087
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18201030003
Status: Unutilized
Reasons: Secured Area

Blgd. 411
Ft. MacArthur Family Housing
San Pedro CA
Landholding Agency: Air Force
Property Number: 18201040004
Status: Unutilized
Reasons: Extensive deterioration

Vandenberg AFB
null
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18201040009
Status: Unutilized
Reasons: Secured Area

37 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040014
Status: Unutilized
Directions: 4199, 4205, 4207, 4211, 4215, 4218, 4219, 4222, 4226, 4227, 4229, 4230, 4231, 4238, 4241, 4242, 4256, 4260, 4264, 4268, 4284, 4286, 4308, 4310, 4314, 4318, 4320, 4333, 4341, 4353, 4355, 4382, 4384, 4395, 4397, 4399, 4401
Reasons: Extensive deterioration

38 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040015
Status: Unutilized
Directions: 4415, 4417, 4457, 4467, 4475, 4496, 4534, 4598, 4600, 4603, 4605, 4618, 4620, 4634, 4636, 4639, 4641, 4659, 4661, 4664, 4666, 4675, 4677, 4691, 4693, 4703, 4705, 4708, 4710, 4717, 4719, 4724, 4725, 4726, 4727, 4732, 4734, 4522
Reasons: Extensive deterioration

11 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040016
Status: Unutilized
Directions: 5205, 5216, 5223, 5228, 5236, 5238, 5277, 5278, 5279, 5294, 5297
Reasons: Extensive deterioration

36 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040017
Status: Unutilized
Directions: 3873, 3887, 3919, 3936, 3942, 3947, 3961, 4075, 4103, 4105, 4115, 4118, 4119, 4120, 4122, 4133, 4136, 4137, 4142, 4145, 4148, 4151, 4157, 4158, 4161, 4166, 4171, 4178, 4179, 4181, 4184, 4185, 4189, 4193, 4197, 4198
Reasons: Extensive deterioration

Bldg. 2170
Marine Corps Air Station, Miramar
San Diego CA
Landholding Agency: Navy
Property Number: 77201110003
Status: Excess
Reasons: Extensive deterioration

Bldg. 210
Coast Guard Training Center
Petaluma CA 94952
Landholding Agency: Coast Guard
Property Number: 88201020002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 220
Coast Guard Training Center
Petaluma CA 95452
Landholding Agency: Coast Guard
Property Number: 88201020003
Status: Unutilized
Reasons: Secured Area

Bldgs. 440, 441, 442
Coast Guard Training Center
Petaluma CA 94952
Landholding Agency: Coast Guard
Property Number: 88201030001
Status: Excess
Reasons: Secured Area

Colorado

Bldg. 9038
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200920004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 6980
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200940009
Status: Unutilized
Reasons: Secured Area

Bldgs. 6966, 6968, 6930, 6932
USAF Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201010005
Status: Unutilized
Reasons: Secured Area

Bldg. 1413
Buckley AFB
Aurora CO
Landholding Agency: Air Force
Property Number: 18201020006
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

7 Bldgs.
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201030004
Status: Unutilized
Directions: 2330, 2331, 2332, 2333, 3190, 9020, 9035
Reasons: Secured Area

2 Bldgs.
N. Peterson Blvd.
Colorado Springs CO 80914
Landholding Agency: Air Force
Property Number: 18201040003
Status: Excess
Directions: 670,1820
Reasons: Within 2000 ft. of flammable or explosive material, Other—legal constraints-—leased from City

Connecticut

Boathouse
USCG Academy
New London CT 06320
Landholding Agency: Coast Guard
Property Number: 88200930001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Florida

Bldg. 82
Air Force Range
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18200840002
Status: Unutilized
Reasons: Contamination, Secured Area

Bldg. 202
Avon Park AF Range
Polk FL 33825
Landholding Agency: Air Force
Property Number: 18200930005
Status: Unutilized
Reasons: Extensive deterioration

Facility 47120
Cape Canaveral AFB
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200940010
Status: Unutilized
Reasons: Secured Area

15 Bldgs.
Tyndall AFB
Bay FL 32403
Landholding Agency: Air Force
Property Number: 18201010006
Status: Unutilized
Directions: 129, 131, 138, 153, 156, 419, 743, 745, 1003, 1269, 1354, 1355, 1506, 6063, 6067
Reasons: Secured Area

4 Bldgs.
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18201010007
Status: Unutilized
Directions: 56621, 56629, 56632, 67901
Reasons: Secured Area

Bldgs. 1622, 60408, and 60537
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18201020007
Status: Unutilized
Reasons: Secured Area

13 Bldgs.
Tyndall AFB
Bay FL 32403
Landholding Agency: Air Force
Property Number: 18201020008
Status: Excess
Directions: B111, B113, B115, B205, B206, B501, B810, B812, B824, B842, B1027, B1257, and B8402
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 90023
Hurlburt Field
Hurlburt FL 32544
Landholding Agency: Air Force
Property Number: 18201030005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 89002
Cape Canaveral AFS
Brevard FL 32920
Landholding Agency: Air Force
Property Number: 18201030006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

9 Bldgs.
null
Cape Canaveral AFS FL 32925
Landholding Agency: Air Force
Property Number: 18201110009
Status: Unutilized
Directions: Bldgs: 44606, 49942, 70650, 78710, 07702, 8801, 8806, 8814, 10751
Reasons: Secured Area

Georgia

6 Cabins
QSRG Grassy Pond Rec Annex
Lake Park GA 31636
Landholding Agency: Air Force
Property Number: 18200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 101, 102, 103
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810006
Status: Excess
Reasons: Extensive deterioration

Bldgs. 330, 331, 332, 333
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 794, 1541
Moody AFB
Lowndes GA
Landholding Agency: Air Force
Property Number: 18200820012
Status: Unutilized
Reasons: Secured Area

Bldg. 970
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200840003
Status: Unutilized
Reasons: Secured Area

Bldg. 205
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 104, 118, 739, 742, 973
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920016
Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Bldgs. 134, 804, 841, 978
Moody AFB
Moody AFB GA 31699
Landholding Agency: Air Force
Property Number: 18201010008
Status: Underutilized
Reasons: Secured Area

Bldgs. 665 and 1219
Moody AFB
Moody AFB GA 31699
Landholding Agency: Air Force
Property Number: 18201020009
Status: Underutilized
Reasons: Secured Area

7 Bldgs.
Moody AFB
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201030007
Status: Unutilized
Directions: 112, 150, 716, 719, 757, 1220, 1718
Reasons: Secured Area

Guam

Bldg. 1094
AAFB Yigo
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200830007
Status: Unutilized
Reasons: Extensive deterioration

15 Bldgs.
Andersen AFB
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200920006
Status: Excess
Reasons: Secured Area

Bldgs. 72, 73, 74
Andersen AFB
Mount Santa Rosa GU
Landholding Agency: Air Force
Property Number: 18200920017
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 101, 102
Andersen AFB
Pots Junction GU
Landholding Agency: Air Force
Property Number: 18200920018
Status: Excess
Reasons: Extensive deterioration

Hawaii

Bldg. 1815
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200730005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1028, 1029
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1710, 1711
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Bldg. 1713
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18200830008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1843
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200920019
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1716
RPUID
Wake Island HI
Landholding Agency: Air Force
Property Number: 18201010009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 12
Kokee AFS
Waimea HI
Landholding Agency: Air Force
Property Number: 18201010010
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 501
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18201010011
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Kaena Point Satellite
Tracking Station
Honolulu HI
Landholding Agency: Air Force
Property Number: 18201010012
Status: Excess
Directions: 16, 18, 20, 21, 32, 33
Reasons: Extensive deterioration

Bldgs. 39 and 14111
Kaena Point Satellite Tracking Station
Honolulu HI 96792
Landholding Agency: Air Force
Property Number: 18201020010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 (PAR) Bldgs.
Coast Guard Base Support Unit
Honolulu HI
Landholding Agency: Coast Guard
Property Number: 88201040001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Illinois

Bldgs. OB1, OB2, OM2
U.S. Coast Guard Station
Calumet Harbor
Chicago IL 60617
Landholding Agency: Coast Guard
Property Number: 88200940005
Status: Excess
Reasons: Extensive deterioration, Secured Area

Indiana

Bldg. 103
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 18
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18201020012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Kansas

27 Bldgs.
McConnell AFB
Sedgwick KS 67210
Landholding Agency: Air Force
Property Number: 18201020013
Status: Excess
Directions: 2052, 2347, 2054, 2056, 2044, 2047, 2049, 2071, 2068, 2065, 2063, 2060, 2237, 2235, 2232, 2230, 2352, 2349, 2345, 2326, 2328, 2330, 2339, 2324, 2342, 2354, and 2333
Reasons: Secured Area

Kentucky

Bldg. DA–473
USGC Obion
Owensboro KY 42303
Landholding Agency: Coast Guard
Property Number: 88201030003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Louisiana

Barksdale Middle Marker
null
Bossier LA 71112
Landholding Agency: Air Force
Property Number: 18200730006
Status: Excess
Reasons: Extensive deterioration

TARS Sites 1–6
null
Morgan City LA 70538
Landholding Agency: Air Force
Property Number: 18201020014
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201110001
Status: Underutilized
Directions: Bldgs: 5163, 5175, 7227, 7266, 7321, 7322
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Maine

Facilities 1, 2, 3, 4
OTH–B Site
Moscow ME 04920

Landholding Agency: Air Force
Property Number: 18200730007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Bldgs. B496 and 497
Bangor Internatl Airport
Bangor ME 04401
Landholding Agency: Air Force
Property Number: 18201020015
Status: Unutilized
Reasons: Secured Area

Maryland

4 Bldgs.
Coast Guard
Annapolis MD 21403
Landholding Agency: Coast Guard
Property Number: 88201010006
Status: Excess
Directions: Qtrs. A–OJ1 and Qtrs. B–OJ2; Qtrs. A–OV4 and Qtrs. B–OV5
Reasons: Secured Area

Massachusetts

Bldg. 5202
USCG Air Station
Bourne MA 02540
Landholding Agency: Coast Guard
Property Number: 88200810002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

3 Sheds
USCG Sector Southeastern
Falmouth MA 02543
Landholding Agency: Coast Guard
Property Number: 88200910001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

5 Bldgs.
USCG Air Station
3434, 3435, 3436, 5424, 5451
Bourne MA 02542
Landholding Agency: Coast Guard
Property Number: 88200920002
Status: Excess
Reasons: Secured Area, Extensive deterioration

Boathouse/Wharf/Pier
USCG Menemsha
Chilmark MA 02535
Landholding Agency: Coast Guard
Property Number: 88201030002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Michigan

Admin. Bldg.
Station Saginaw River
Essexville MI 48732
Landholding Agency: Coast Guard
Property Number: 88200510001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Mississippi

5 Bldgs
AFB
Keesler MS 39534
Landholding Agency: Air Force
Property Number: 18201110004
Status: Excess
Directions: Bldgs: B2804, B4203, B4812, B6903, B6918
Reasons: Secured Area

Montana

7 Bldgs. AFB
107 77th Street North
Malmstrom AFB
Malmstrom MT 59402–7540
Landholding Agency: Air Force
Property Number: 18201110002
Status: Underutilized
Directions: 581, 800, 1082, 1152, 1156, 1705, 3065
Reasons: Secured Area

Nebraska

Bldgs. 163, 402, 554
Offutt AFB
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201030008
Status: Excess
Reasons: Secured Area

Vault Toilets
Harlan County Project

New Hampshire

Bldg. 152
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200920007
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 16
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200930006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

New Jersey

Bldgs. 2609, 2611
Joint Base
McGuire NJ
Landholding Agency: Air Force
Property Number: 18201010013
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Joint Base McGuire-Dix-Lakehurst
Trenton NJ 08641
Landholding Agency: Air Force
Property Number: 18201020016
Status: Unutilized
Directions: 1827, 1925, 3424, 3446, and 3449
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Coast Guard Training Center
Cape May NJ 08204
Landholding Agency: Coast Guard
Property Number: 88201040006
Status: Excess
Directions: 16A, 16B, 020, 203A, 220A, 220I, 140, 203, 220, 273
Reasons: Extensive deterioration

New Mexico

Bldg. 1016
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200730008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 40, 841
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200820016
Status: Underutilized
Reasons: Secured Area

Bldgs. 436, 437
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200820017
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 20612, 29071, 37505
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200830010
Status: Unutilized
Reasons: Secured Area

Bldgs. 88, 89
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 312, 322
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830021
Status: Unutilized
Reasons: Secured Area

Bldg. 569
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830022
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 807, 833
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1245
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830024
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200840004
Status: Unutilized
Directions: 1201, 1202, 1203, 1205, 1207

Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200920008
Status: Unutilized
Directions: 71, 1187, 1200, 1284, 1285
Reasons: Secured Area

6 Bldgs.
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930007
Status: Unutilized
Directions: 920, 921, 922, 923, 924, 930
Reasons: Secured Area

Bldgs. 1113, 1127
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930008
Status: Unutilized
Reasons: Secured Area

Bldg. 30143
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200930009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1267, 1620
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200940013
Status: Unutilized
Reasons: Secured Area

Bldgs. 214, 851, 1199
Holloman AFB
Holloman AFB NM 88330
Landholding Agency: Air Force
Property Number: 18201010014
Status: Underutilized
Reasons: Secured Area

Bldg. 865
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldg. 790
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 880
1241 Moroni
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201040001
Status: Unutilized
Reasons: Secured Area

Bldg. 825
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201040002
Status: Unutilized
Reasons: Extensive deterioration

New York

Bldg. 13
USCG Staten Island
Suffolk NY 10305
Landholding Agency: Coast Guard
Property Number: 88200910002
Status: Excess
Reasons: Secured Area, Extensive deterioration

Boat House
USCG Station Eaton's Neck
Northport NY 11768
Landholding Agency: Coast Guard
Property Number: 88200920005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

North Carolina

RPFN 0S1
Group Cape Hatteras
Buxton NC 27902
Landholding Agency: Coast Guard
Property Number: 88200540001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

RPFN 053
Sector N.C.
Atlantic Beach NC 28512
Landholding Agency: Coast Guard
Property Number: 88200540002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Equip. Bldg.
Coast Guard Station
11101 Station St.
Emerald Isle NC
Landholding Agency: Coast Guard
Property Number: 88200630001
Status: Unutilized
Reasons: Secured Area

Sewage Treatment Facility
USCG Cape Hatteras
Buxton NC 27902
Landholding Agency: Coast Guard
Property Number: 88200920006
Status: Unutilized
Reasons: Secured Area

Bldgs. OK1, OK2
USCG Station
Hobucken NC 28537
Landholding Agency: Coast Guard
Property Number: 88201010001
Status: Excess
Reasons: Secured Area, Extensive deterioration

10 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010002
Status: Excess
Directions: OB2, OB4, OD1, OD2, OE1, OG1, OI1, 001, 0S1, OU1
Reasons: Floodway, Secured Area

7 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010003
Status: Excess
Directions: OR1, OR2, OR4, OR5, OR6, OR7, OR8
Reasons: Floodway, Secured Area

10 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010004
Status: Excess
Directions: OV1, OV4, OV5, OV6, OV7, OV8, OV9, OV10, OV11, OV12
Reasons: Floodway, Secured Area

5 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010005
Status: Excess
Directions: NB1, NR1, NR2, NS1, NS2
Reasons: Floodway, Secured Area

Barracks 61
Coast Guard Support Unit
Elizabeth NC 27909
Landholding Agency: Coast Guard
Property Number: 88201040007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

North Dakota

Bldgs. 1612, 1741
Grand Forks AFB
Grand Forks ND 58205
Landholding Agency: Air Force
Property Number: 18200720023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
4128 27th Ave.
Grand Forks ND 58203
Landholding Agency: Air Force
Property Number: 18201040012
Status: Unutilized
Directions: 120,200,250,255,300
Reasons: Within 2000 ft. of flammable or explosive material

Ohio

Naval Reserve Center
null
Cleveland OH 44114
Landholding Agency: Coast Guard
Property Number: 88200740002
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldgs. OO1, OT1, OC1, OC2, OC2
U.S. Coast Guard
Cleveland OH 44114
Landholding Agency: Coast Guard
Property Number: 88201040004
Status: Excess
Reasons: Secured Area, Extensive deterioration

Oklahoma

Bldg. 193
Vance AFB
Vance OK 73705
Landholding Agency: Air Force
Property Number: 18201010015

Status: Excess
Reasons: Secured Area

3 Bldgs.
Altus AFB
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201040013
Status: Excess
Directions: 296,444,503
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Control Tower Facility 163
626 Elam Road
Vance Air Force Base
Vance OK
Landholding Agency: Air Force
Property Number: 18201110006
Status: Excess
Reasons: Secured Area, Within airport runway clear zone

Oregon

Bldg. 1001
ANG Base
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18200820018
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. B023, B002
USCG Air Station
North Bend OR
Landholding Agency: Coast Guard
Property Number: 88201040002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

South Carolina

Bldgs. 19, 20, 23
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730009
Status: Underutilized
Reasons: Secured Area

Bldgs. 27, 28, 29
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730010
Status: Underutilized
Reasons: Secured Area

Bldgs. 30, 39
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200920021
Status: Unutilized
Directions: B14, B22, B31, B116, B218, B232, B343, B3403
Reasons: Secured Area

Bldg. B1626
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200930010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

10 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940014
Status: Unutilized
Directions: B16, B34, B122, B219, B220, B221, B403, B418, B428, B430
Reasons: Secured Area

5 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940015
Status: Unutilized
Directions: B800, B900, B911, B1040, B1041
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumber SC 29152
Landholding Agency: Air Force
Property Number: 18200940016
Status: Unutilized
Directions: B1702, B1707, B1708, B1804, B1813, B1907, B5226
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201020017
Status: Unutilized
Directions: B1026, B400, B401, B1402, B1701, B1711, and B1720
Reasons: Secured Area

Bldgs. B40006 and B40009
Shaw AFB
Wedgefield SC 29168
Landholding Agency: Air Force
Property Number: 18201020018
Status: Unutilized
Reasons: Secured Area

Bldg. B411
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201030010
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

25 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040006
Status: Excess
Directions: 1501B, 1503A, 1503B, 1506A, 1508A, 1508B, 1512A, 1514A, 1520A, 1520B, 1529A, 1531A, 1531B, 1533A, 1533B, 1537A, 1539A, 1540A, 1540B, 1563A, 1563B, 1565B, 1576A, 1577A, 1577B
Reasons: Secured Area

20 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040007
Status: Excess
Directions: 1505A, 1505B, 1506B, 1507B, 1510A, 1510B, 1514B, 1516A, 1516B, 1518B, 1532B, 1533B, 1538B, 1539B, 1575B, 1576B, 1576B, 1578B, 1579B, 1580A, 1580B
Reasons: Secured Area

13 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040008
Status: Excess
Directions: 1501A, 1507A, 1509A, 1517A, 1518A, 1533A, 1535A, 1538A, 1565A, 1575A, 1578A, 1579A, 1688A
Reasons: Secured Area

4 Bldgs.
JB AFB
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040010
Status: Excess
Directions: 1515, 1530, 1536, 1571
Reasons: Secured Area

12 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040018
Status: Excess
Directions: 1512B, 1529B, 1537B, 1519A, 1519B, 1688B, 1690A, 1690B, 1509B, 1517B, 1521A, 1521B
Reasons: Secured Area

2 Bldgs.
Edwards AFB
Edwards SC 93524
Landholding Agency: Air Force
Property Number: 18201040019
Status: Excess
Directions: 1014, 1015
Reasons: Secured Area

South Dakota

Bldg. 2306
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 6927
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200830011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Texas

Bldg. 1001
FNXC, Dyess AFB
Tye TX 79563
Landholding Agency: Air Force
Property Number: 18200810008
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840005
Status: Unutilized
Directions: B–4003, 4120, B–4124, 4127, 4130

Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840006
Status: Unutilized
Directions: 7225, 7226, 7227, 7313
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840007
Status: Unutilized
Directions: 8050, 8054, 8129, 8133
Reasons: Secured Area

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840008
Status: Unutilized
Directions: B–9032, 9107, 9114, B–9140, 11900
Reasons: Secured Area

Bldg. B–4228
FNWZ Dyess AFB
Taylor TX 79607
Landholding Agency: Air Force
Property Number: 18200920009
Status: Unutilized
Reasons: Secured Area

Bldgs. B–3701, B–3702
FNWZ Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920010
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4
Tethered Aerostat Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920023
Status: Excess
Reasons: Secured Area

Bldg. 154
Goodfellow AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18200920024
Status: Unutilized
Reasons: Secured Area

Bldg. FNXH 2001
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

6 Bldgs.
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930013
Status: Unutilized
Directions: FNWZ 7235, 7312, 7405, 8045, 8120, 9113
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Dyess AFB TX
Landholding Agency: Air Force
Property Number: 18200940017
Status: Unutilized
Directions: FNWZ 5017, 5305, 6015, 6122
Reasons: Secured Area

Bldg. 351
Laughlin AFB
Del Rio TX 78840
Landholding Agency: Air Force
Property Number: 18201010016
Status: Unutilized
Reasons: Secured Area

Bldgs. 112, 113, 141, 741
Goodfellow AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18201010017
Status: Excess
Reasons: Secured Area

Bldgs. 6115, 6126, 6127
Dyess AFB
Dyess TX 79607
Landholding Agency: Air Force
Property Number: 18201030011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
AFB
Shappard TX 76311–2621
Landholding Agency: Air Force
Property Number: 18201110003
Status: Unutilized
Directions: Bldgs: 17, 19, 21, 147, 526, 726, 982, 1644
Reasons: Extensive deterioration

Barrack
US Coast Guard
Galveston TX 77553
Landholding Agency: Coast Guard
Property Number: 88201040003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Virginia

12 Bldgs.
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18200920012
Status: Unutilized
Directions: 35, 36, 903, 905, 1013, 1020, 1033, 1050, 1066, 1067, 1069, 1075
Reasons: Floodway Secured Area

Bldgs. 38, 52
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201010018
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 52, 568, 731
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201030012
Status: Unutilized
Reasons: Extensive deterioration Secured Area

Joint Base Langley Eustis
AFB
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201110011
Status: Unutilized
Reasons: Extensive deterioration

9 Bldgs.
USCG Cape Charles Station
Winters Quarters
Northampton VA 23310
Landholding Agency: Coast Guard
Property Number: 88200740001
Status: Unutilized
Reasons: Extensive deterioration

U.S.C.G. BSU, Admin Bldgs
13800 Old Gently Road
New Orleans VA 70129
Landholding Agency: Coast Guard
Property Number: 88201110003
Status: Unutilized
Directions: Bldgs. 1, 2, 3, 4, 5, 6, 7, 8, 9
Reasons: Secured Area Extensive deterioration

Washington

Defense Fuel Supply Point
18 structures/21 acres
Mukilteo WA
Landholding Agency: Air Force
Property Number: 18200910001
Status: Unutilized
Reasons: Extensive deterioration

West Virginia

Bldgs. 102, 106, 111
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200920013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 101, 110
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200940018
Status: Unutilized
Reasons: Secured Area Within 2000 ft. of flammable or explosive material

Wyoming

Bldg. 00012
Cheyenne RAP
Laramie WY 82009
Landholding Agency: Air Force
Property Number: 18200730013
Status: Unutilized
Reasons: Extensive deterioration Secured Area Within 2000 ft. of flammable or explosive material

California

Facilities 99001 thru 99006
Pt Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820028
Status: Excess
Reasons: Secured Area

7 Facilities
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820031
Status: Excess
Directions: 99001, 99003, 99004, 99005, 99006, 99007, 99008
Reasons: Secured Area

Facilities 99002 thru 99014

Pt. Arena Water Sys Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820032
Status: Excess
Reasons: Secured Area

Florida

Defense Fuel Supply Point
Lynn Haven FL 32444
Landholding Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

Illinois

Annex
Scolt Radio Relay
Belleville IL 62221
Landholding Agency: Air Force
Property Number: 18201020011
Status: Unutilized
Reasons: Secured Area

Indiana

1.059 acres
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

North Dakota

JFSE
4128 27th Ave.
Grand Forks ND 58203
Landholding Agency: Air Force
Property Number: 18201040011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Texas

Rattlesnake ESS
FNWZ, Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920011
Status: Unutilized
Reasons: Secured Area

24 acres
Tethered Aerostate Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920022
Status: Excess
Reasons: Secured Area

FNXH 99100
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

2.43 acre/0.36 acre
Dyess AFB
Dyess AFB TX 79563
Landholding Agency: Air Force
Property Number: 18200930014
Status: Unutilized
Directions: FNXL 99104, 99108, 99110, 99112, FNXM 99102, 99103, 99108
Reasons: Within airport runway clear zone

Virginia

Site 3—Cheatham
P.O. Drawer 200
Yorktown VA 23691–0160
Landholding Agency: Navy
Property Number: 77201110004
Status: Unutilized
Directions: on Water Tank near bldg. 101 & T1072, Naval Weapon Station Yorktown
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

[FR Doc. 2011–4034 Filed 2–24–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N011; 1265–0000–10137–S3]

Palmyra Atoll National Wildlife Refuge, U.S. Pacific Island Territory; Nonnative Rat Eradication Project, Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of Palmyra Atoll National Wildlife Refuge (Refuge) nonnative rat eradication project draft environmental impact statement (DEIS) for public review and comment. In the DEIS we describe a range of alternatives for eliminating nonnative rats from the Refuge.

DATES: To ensure consideration, please send your written comments by April 11, 2011.

ADDRESSES: You may send your comments or requests for information by any of the following methods. For information on viewing or obtaining the documents, see "Public Availability of Documents" under **SUPPLEMENTARY INFORMATION**.

E-mail: pacific_reefs@fws.gov. Include "Palmyra rat project" in subject line.

Fax: Attn: Dr. Elizabeth Flint, 808–792–9586.

U.S. Mail: Pacific Reefs National Wildlife Refuge Complex, 300 Ala Moana Blvd., Room 5–231, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Elizabeth Flint, Supervisory Wildlife Biologist, (808) 792–9553.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the public involvement process for our DEIS, in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as amended, and its implementing regulations. We started the process through a notice in the **Federal Register** (75 FR 2158) published on January 14, 2010.

Refuge Overview

Palmyra Atoll National Wildlife Refuge is located in the Northern Line Islands, approximately 1,000 miles south of Honolulu, HI, in the central Pacific Ocean. The Refuge encompasses nearly all of the Palmyra Atoll (Atoll). The Atoll consists of approximately 54 small, heavily vegetated islets surrounding 3 central lagoons. Habitats consist of 680 acres of land and 15,512 acres of lagoons and shallow reefs. The Nature Conservancy (TNC) purchased the Atoll's islands in 2000 from private landowners, and later sold most of the islands to the Service. The Refuge was established to manage, conserve, protect, and restore fish, wildlife, and plant resources and their habitats for future generations.

The Nature Conservancy retained ownership of Cooper and Menge Islands, and established a small research station on Cooper Island that is operational year round. The Nature Conservancy's mission is to preserve plants, animals and natural communities that represent the biological diversity of life on Earth by protecting the lands and waters they need to survive. The Service and TNC work cooperatively to protect, restore, and enhance migratory birds, coral reefs, and threatened and endangered species in their natural setting on the Atoll.

The Pacific Remote Islands Marine National Monument (Monument) was established on January 6, 2009, by Presidential Proclamation by President George W. Bush. The Refuge is one of seven refuges in the Monument, and is encompassed within the Monument's boundaries. The Refuge's boundary extends seaward 12 nautical miles, encompassing 515,232 acres; the boundary of the Monument extends resource protection out to 50 nautical miles. The Refuge's terrestrial habitats support one of the largest remaining tropical coastal strand forests in the U.S. Pacific Islands, primarily consisting of the *Pisonia grandis* tree. A diverse land crab fauna including the coconut crab, ecologically intact predator-dominated fish assemblages, and large seabird populations are important Refuge resources. The Refuge is closed to commercial fishing.

Background

The National Environmental Policy Act and National Wildlife Refuge System Administration Act

We prepared the DEIS in accordance with NEPA, and its implementing regulations; the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Refuge Administration Act); and Service regulations and policies. The Refuge Administration Act requires each unit of the National Wildlife Refuge System to be managed to achieve its establishing purposes.

Public Outreach

We conducted public scoping for the DEIS from January 14 to March 1, 2010 (75 FR 2158). During that time we requested public comments through the **Federal Register** and on our Web site *http://www.fws.gov/palmyraatoll/rainforestrestoration.html.* The comments we received covered topics such as threats to nontarget species, our selection of the rodenticide brodifacoum over diphacinone, and effects to other Refuge operations. We have considered and evaluated these comments, and incorporated them into the various alternatives identified in the DEIS. We are now requesting your comments on our draft alternatives.

Invasive Species on the Atoll

The Atoll was significantly modified by the U.S. Navy during World War II. A network of roadways connecting the major islets and the construction of a north-south causeway altered natural water circulation. The impacts from invasive species on the Atoll's native forests, fauna, and habitats are associated with World War II era restructuring and invasive species introductions that included plants (coconut palm), insects (several ant species, mosquitoes, and scale insects), and mammals (black rats).

Black rats cause degradation of nearly all aspects of the Atoll's ecosystem, from breeding seabird populations to the native *Pisonia* forest ecotype. Rats prey on native seabirds, their eggs, and their young, and are likely preventing the recolonization of six additional seabird species indigenous to the area. The rats prey on native land crabs as well, and directly compete with them for limited food resources.

Black rats provide habitat for other invasive species. The spread of coconut palm, an invasive tree species, is likely aided by rat-related recruitment and limitation of other tree species. Rats foraging on coconuts create habitat for invasive mosquitoes, and spread the seeds of invasive flora throughout the Atoll. The rats are modifying the terrestrial ecosystem of this important Atoll by limiting the reproduction, recruitment, and establishment of several native tree species. Coconut palms already dominate 45 percent of the Refuge's forests. Left unchecked, the combined effects of rats and coconut palms could drastically alter forest structure. All of these impacts in turn affect the relationship between land and marine resources, and compromise our ability to achieve Refuge purposes.

Palmyra Atoll also functions as a natural laboratory, where scientists study ocean acidification and other effects of anthropogenic global climate change, including the movements of endangered species in the absence of other significant human-induced effects, and other issues. Removing rats and restoring the ecological integrity of the ecosystem are essential for facilitating this research.

Palmyra Atoll Restoration

Removing rats from Palmyra Atoll is the first step in a series of restoration efforts designed to restore the Atoll to its pre World War II status. Rat eradication is the first step in the process, because eradicating the rats is feasible and relatively fast. Removing the rats will enhance the ecological integrity of the Atoll by slowing the spread of coconut palms and allowing extirpated breeding seabird species to recolonize. The next stage of restoration, eradicating the coconut palms, becomes feasible after the removal of the rats.

Eradicating rats from Palmyra is expected to result in biodiversity benefits for seabirds, plants, terrestrial invertebrates, and other components of the Atoll's terrestrial ecosystem. Removing the threat of rats will give Palmyra's remnant native forest and the extant and likely extirpated seabird species the opportunity to recover. The benefit of this conservation action is significant from a regional perspective because Palmyra is the only moist tropical atoll ecosystem in the Central Pacific with strong Federal protections that is not experiencing exploitation of both marine and terrestrial natural resources by burgeoning human populations. Removing rats from Palmyra will help prevent the extinction of the Central Pacific moist tropical island ecotype.

Alternatives

We developed four alternatives, including Alternative A, our no action alternative. The action alternatives—Alternatives B, C, and D—were developed to focus on the primary issues we identified internally and in comments we received during public scoping from the public, national and international experts in island rodent eradication, and government regulatory agencies.

The potential impacts of the alternatives are assessed in the DEIS, and where appropriate, mitigation measures are applied to reduce the intensity of or avoid the potential effects. A brief description of each alternative follows.

Under Alternative A, our no-action alternative, no new actions to eradicate the black rat population from Palmyra Atoll would be implemented, and the black rat would continue to multiply and harm the Atoll's environment.

Under Alternative B, we would apply a brodifacoum pesticide where appropriate using hand baiting, aerial application, and bait stations, to eliminate black rats from Palmyra Atoll.

Under Alternative C, we would apply a brodifacoum pesticide where appropriate using hand baiting, aerial application, and bait stations, to eliminate black rats from Palmyra Atoll. We would also proactively mitigate potential risks to vulnerable shorebirds.

Under Alternative D, we would establish brodifacoum bait stations and conduct canopy baiting to eliminate black rats from Palmyra Atoll.

Public Availability of the DEIS

The DEIS is available for viewing and downloading on our Web site at *http://www.fws.gov/palmyraatoll/.* Printed copies of the DEIS may be reviewed at the Pacific Reefs National Wildlife Refuge Complex Office, 300 Ala Moana Blvd., Room 5–211, Honolulu, HI 96850; phone (808) 792–9550.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final environmental impact statement.

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.

Dated: February 4, 2011.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–4040 Filed 2–24–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N035; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before March 28, 2011. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by March 28, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: U.S. Fish and Wildlife Service, Anchorage Field Office, Anchorage, AK; PRT–29819A.

The applicant requests a permit to export one short-tailed albatross (*Phoebastria albatrus*) specimen, acquired via incidental take to the Museum of New Zealand Te Papa Tongarewa for the purpose of enhancement of the survival of the species.

Applicant: Caroline Stahala, Florida State University, Tallahassee, FL; PRT–29587A.

The applicant requests a permit to import 150 blood samples from Bahama parrot (*Amazona leucocephala bahamensis*), for the purpose of scientific research and enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Russell Herring, Phenix City, AL; PRT–23648A.

Applicant: Nicholas Andreola, Garland, TX; PRT–34141A.

Applicant: Harold Rank, Colton, CA; PRT–35237A.

Applicant: Jeffrey Bearden. League City, TX; PRT–35221A.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Wild Horizons, Ltd., Bristol, United Kingdom; PRT–31164A.

The applicant requests a permit to photograph northern sea otters (*Enhydra lutris kenyoni*) in Alaska, from the air and the ground and in the water, for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a 1-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: February 18, 2011.

Brenda Tapia.

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–4238 Filed 2–24–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Census of Fatal Occupational Injuries

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Census of Fatal Occupational Injuries," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 28, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7314/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Census of Fatal Occupational Injuries provides policymakers and the public with comprehensive, verifiable, and timely measures of fatal work injuries. Data are complied from various Federal, State, and local sources and include information on how the incident occurred as well as various characteristics of the employers and the deceased worker. This information is used for surveillance of fatal work injuries and for developing prevention strategies.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0133. The current OMB approval is scheduled to expire on February 28, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on October 20, 2010 (75 FR 64746).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1220–0133. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Census of Fatal Occupational Injuries.

OMB Control Number: 1220–0133.

Affected Public: Federal Government; individuals or households; private sector—business or other for-profits, farms, not-for-profit institutions; State, local, and Tribal governments.

Total Estimated Number of Respondents: 2,021.

Total Estimated Number of Responses: 26,797.

Total Estimated Annual Burden Hours: 4,073.

Total Estimated Annual Costs Burden: $0.

Dated: February 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–4281 Filed 2–24–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employment and Training Data Validation Requirement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Employment and Training Data Validation Requirement," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 25, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: States and grantees receiving funding under ETA programs are required to maintain and report accurate and reliable program and financial information. Data validation requires States and grantees to ascertain the validity of report and participant record data submitted to the ETA and to submit reports to the Agency on data accuracy. The following programs are subject to the Employment and Training Data Validation Requirement in this request: Workforce Investment Act Title IB, Wagner-Peysner Act, Trade Adjustment Assistance, National Farmworker Jobs Program, and Senior Community Service and Employment Program.

The Employment and Training Data Validation Requirement is an information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0448. The current OMB approval is scheduled to expire on February 28, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 27, 2010 (75 FR 59294).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1205–0448. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Employment and Training Data Validation Requirement.

OMB Control Number: 1205–0448.

Affected Public: Private sector—Not-for-profit institutions; State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 318.

Total Estimated Number of Responses: 318.

Total Estimated Annual Burden Hours: 62,174.

Total Estimated Annual Costs Burden: $0.

Dated: February 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–4283 Filed 2–24–11; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Request for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 28, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Form Letter CA–1032 obtains information from a claimant receiving workers' compensation benefits over an extended period of time. The OWCP uses his information to determine whether the claimant is entitled to continue receiving benefits and whether the benefit amount should be adjusted.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0016. The current OMB approval is scheduled to expire on February 28, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related

notice published in the **Federal Register** on October 18, 2010 (75 FR 63863).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1240–0016. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Request for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements.

OMB Control Number: 1240–0016.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 50,000.

Total Estimated Number of Responses: 50,000.

Total Estimated Annual Burden Hours: 16,667.

Total Estimated Annual Costs Burden: $23,500.

Dated: February 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–4285 Filed 2–24–11; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–019)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, March 16, 2011, 2 p.m. to 3 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–972–6899, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 997 494 870, and password PSS_Mar16.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Discussion and Formulation of the Planetary Science Division's Response to the NRC Planetary Decadal Survey Report.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: February 17, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration and Space Administration.

[FR Doc. 2011–4193 Filed 2–24–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Science Foundation.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the National Science Foundation has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted March 28, 2011.

ADDRESSES: Written comments may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 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, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be

generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the National Science Foundation's projected average estimates for the next three years:[1]

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 10.

Respondents: 500 per activity.

Annual Responses: 5,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden hours: 2,500.

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 Office of Management and Budget control number.

Dated: February 22, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–4274 Filed 2–24–11; 8:45 am]

BILLING CODE 7555–01–P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

NATIONAL SCIENCE FOUNDATION

Assumption Buster Workshop: Trust Anchors Are Invulnerable

AGENCY: The National Coordination Office (NCO) for the Networking and Information Technology Research and Development (NITRD) Program.

ACTION: Call for participation.

SUMMARY: The NCO, on behalf of the Special Cyber Operations Research and Engineering (SCORE) Committee, an interagency working group that coordinates cyber security research activities in support of national security systems, is seeking expert participants in a day-long workshop on the pros and cons of the use and implementation of trust anchors. The workshop will be held April 27, 2011 in the Savage, MD area. Applications will be accepted until 5 p.m. EST March 18, 2011. Accepted participants will be notified by March 30, 2011.

DATES: *Workshop:* April 27, 2011; *Deadline:* March 18, 2011. Apply via e-mail to *assumptionbusters@nitrd.gov.* Travel expenses will be paid for selected participants who live more than 50 miles from Washington, DC, up to the limits established by Federal Government travel regulations and restrictions.

FOR FURTHER INFORMATION CONTACT: *assumptionbusters@nitrd.gov.*

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program on behalf of the SCORE Committee.

Background: There is a strong and often repeated call for research to provide novel cyber security solutions. The rhetoric of this call is to elicit new solutions that are radically different from existing solutions. Continuing research that achieves only incremental improvements is a losing proposition. We are lagging behind and need technological leaps to get, and keep, ahead of adversaries who are themselves rapidly improving attack technology. To answer this call, we must examine the key assumptions that underlie current security architectures. Challenging those assumptions both opens up the possibilities for novel solutions that are rooted in a fundamentally different understanding of the problem and provides an even stronger basis for moving forward on those assumptions that are well-founded. The SCORE Committee is conducting a series of four workshops to begin the assumption buster process. The assumptions that underlie this series are that cyber space is an adversarial domain, that the adversary is tenacious, clever, and capable, and that re-examining cyber security solutions in the context of these assumptions will result in key insights that will lead to the novel solutions we desperately need. To ensure that our discussion has the requisite adversarial flavor, we are inviting researchers who develop solutions of the type under discussion, and researchers who exploit these solutions. The goal is to engage in robust debate of topics generally believed to be true to determine to what extent that claim is warranted. The adversarial nature of these debates is meant to ensure the threat environment is reflected in the discussion in order to elicit innovative research concepts that will have a greater chance of having a sustained positive impact on our cyber security posture.

The second topic to be explored in this series is "Trust Anchors are Invulnerable." The workshop on this topic will be held in the Savage, MD area on April 27, 2011.

Assertion: "Trust anchors are invulnerable thus users who faithfully deploy reliable trust anchors can be confident that they are immune from the attacks."

This assertion underlies significant cyber security research and development that is aimed at developing and implementing invulnerable trust anchors, security keystones that cannot be circumvented, and that assure that trust in a system is well grounded. Numerous trust anchors are proffered at different levels of assurance and for different aspects of the system. Platform trust is assured by

the Trusted Platform Module. Trusted authentication is provided by tokens. The padlock on the browser assures we can trust web interactions since they are protected by SSL. Close-held keys and strong key management systems assure cryptographic trust.

At the workshop we will explore what assurances these trust anchors do and do not provide, what they depend upon, how they do or do not interact with the rest of the system, how they typically fail, and what needs to be addressed to enable effective use of them.

How To Apply

If you would like to participate in this workshop, please submit (1) a resume or curriculum vita of no more than two pages which highlights your expertise in this area and (2) a one-page paper stating your opinion of the assertion and outlining your key thoughts on the topic. The workshop will accommodate no more than 60 participants, so these brief documents need to make a compelling case for your participation. Applications should be submitted to *assumptionbusters@nitrd.gov* no later than 5 p.m. EST on March 18, 2011.

Selection and Notification: The SCORE committee will select an expert group that reflects a broad range of opinions on the assertion. Accepted participants will be notified by e-mail no later than March 30, 2011. We cannot guarantee that we will contact individuals who are not selected, though we will attempt to do so unless the volume of responses is overwhelming.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on February 22, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–4272 Filed 2–24–11; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

International Product Change—International Business Reply Service Contract

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service gives notice of filing a request with the Postal Regulatory Commission to add International Business Reply Service Competitive Contract 3 to the Competitive Products List pursuant to 39 U.S.C. 3642.

DATES: February 25, 2011.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 202–268–2576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it has filed with the Postal Regulatory Commission a Request of United States Postal Service To Add International Business Reply Service Competitive Contract 3 to the Competitive Products List, and Notice of Filing Contract (Under Seal). Documents are available at *http://www.prc.gov,* Docket Nos. MC2011–21 and CP2011–59.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2011–4209 Filed 2–24–11; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63936; File No. SR–DTC–2011–03]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Providing Participants With a New Optional Settlement Web Interface

February 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 7, 2011, The Depository Trust Company ("DTC") 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish a new browser-based interface, the "Settlement Web," that allows Participants to view their settlement-related activity.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC Participants have the ability to view all of their settlement related activity using different functions in the Participant Browser System ("PBS").[4] Based on request from its Participants, DTC has created a more user-friendly interface called Settlement Web that allows Participants to view their settlement related activity. The Settlement Web will reduce the amount of time that Participants spend in PBS by increasing the efficiency in searching for settlement activity. Participants that chose to use the Settlement Web will have access to a Navigation Bar that will provide Participants with improved inquiry and update capabilities for their settlement transactions. Participants will also have the ability to view different settlement related activities using the Dashboard in the Settlement Web homepage. Additionally, Participants will have the option to use an alert function located within the Settlement Web's dashboard to provide them to set alerts regarding settlement related events.[5] Participants will be able to customize the function to control which events for which they want to be notified. These alerts will reduce the amount of time spent in PBS because Participants will no longer have to manually check multiple settlement functions to be made aware of various settlement events. Notifications will be made available to Participants through the alerts window in the dashboard or by e-mail. The e-mail will notify the

[4] In 2008, DTCC completed a multi-year initiative to transition all Participant Terminal System ("PTS") functions to PBS. Now, rather than toggle between the two tools, Participants can manage all their needs through the web-based PBS, which is more flexible than PTS while offering greater functionality. However, Participants are still able to use PTS for most of their settlement activities.

[5] Events, which include, for example, settlement extension broadcasts and the receipt of a specific delivery, are regularly scheduled processing milestones associated with a given settlement cycle.

Participant that an alert has been triggered, but the Participant will be required to sign into the Dashboard in order to receive the alert message. While this alert message will provide Participants with greater efficiency in how they view settlement events, Participants will continue to have the responsibility to independently check the settlement functions to verify all of their settlement related events.

Additionally, DTC is making unrelated technical updates to its Settlement Service Guide to conform to certain rule changes that have previously been filed with the Commission.[6] These changes will necessitate revisions to the existing DTC Settlement Guide and those revisions are attached to DTC's proposed rule filing as Exhibit 5.

DTC states that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because it will promote efficiencies in the way that Participants view settlement related transactions and as such will promote the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which it is responsible and (ii) does not significantly affect the respective rights of DTC or persons using the service. 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 No. SR–DTC–2011–03 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 No. SR–DTC–2011–03. 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 filings also will be available for inspection and copying at DTC's principal office and DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2011/dtc/2011-03.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2011–03 and should be submitted on or before March 18, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4289 Filed 2–24–11; 8:45 am]

BILLING CODE 8011–01–P

[6] In 2010, DTC implemented a new function that allows DTC Participants to set a profile in PBS so that they can request that excess funds be wired to their settling bank account at approximately 3:20 p.m. Eastern Time. Securities Exchange Act Release No. 61922 (Apr. 15, 2010), 75 FR 21072 (Apr. 22, 2010). Also in 2010, DTC updated its processing schedule in order to extend the end-of-day cutoff time for processing pledges and releases to and from the New York Federal Reserve Bank from 3 p.m. to 5 p.m. Securities Exchange Act Release No. 63415 (Dec. 2, 2010), 75 FR 76506 (Dec. 8, 2010).

[7] *Supra* note 2.

[8] *Supra* note 3.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63933; File No. SR–FINRA–2010–056]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and To Amend the FINRA Rule 9520 Series (Eligibility Proceedings)

February 18, 2011.

I. Introduction

On November 1, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to amend the FINRA Rule 9520 Series (Eligibility Proceedings) to restrict new member applicants' and certain members' association with disqualified persons. The proposed rule change was published for comment in the **Federal Register** on November 22, 2010.[3] The Commission received three comment letters on the proposed rule change.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63316 (Nov. 15, 2010), 75 FR 71166 (Nov. 22, 2010) ("Notice").

[4] *See* letter from Board of Directors, ASG Securities Inc., to the Commission, dated Dec. 13, 2010 ("ASG Letter"); letter from Manuel P. Asensio-Garcia, to the Commission, dated Dec. 20, 2010;

Continued

FINRA responded to these comments in a letter dated February 4, 2011.[5] This order approves the proposed rule change.

II. Description of Proposal

Article III, Section 3(b) of the FINRA By-Laws provides that no person shall be associated with a member, continue to be associated with a member, or transfer association to another member if such person is or becomes subject to a disqualification; and, that no person shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is subject to a disqualification. Pursuant to Article III, Section 4 of the FINRA By-Laws, a person is subject to a "disqualification" with respect to membership, or association with a member, if such person is subject to any "statutory disqualification" as such term is defined in Exchange Act Section 3(a)(39).[6]

The FINRA Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification, and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and rules. The FINRA Rule 9520 Series also contemplates that a new member applicant may sponsor a proposed associated person or itself for relief from the eligibility or qualification requirements. A member (or new member applicant) seeking to associate with a person subject to a disqualification must seek approval from FINRA by filing a Form MC–400 application, pursuant to the FINRA Rule 9520 Series. Members (and new member applicants) that are themselves subject to a disqualification that wish to obtain relief from the eligibility requirements are required to submit a Form MC–400A application.

FINRA proposed to adopt new FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to amend the FINRA Rule 9520 Series (Eligibility Proceedings) to further restrict new member applicants' and certain members' association with disqualified persons.

New FINRA Rule 1113 would direct FINRA's Department of Member Regulation ("Department") to reject an application for FINRA membership[7] in which either the applicant or an associated person of the applicant, as defined in Article I of the FINRA By-Laws,[8] is subject to a statutory disqualification, as defined in Article III, Section 4 of the FINRA By-Laws.[9] The proposed new rule would also provide that any new member application that the Department approves due to a Department or applicant error (including, but not limited to, an inadvertent or intentional misstatement or omission by the applicant or associated person) shall be subject to membership cancellation in accordance with FINRA Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

The proposed amendments to the FINRA Rule 9520 Series, which sets forth the eligibility proceedings for membership, would have the following effects: First, they would amend the FINRA Rule 9520 Series definition of "sponsoring member"[10] to eliminate the reference to new member applicants. FINRA believes that because new member applicants do not have any prior operating or supervisory history there is nothing to indicate the necessary experience to supervise disqualified persons. FINRA believes that the proposed amendment would alleviate its concerns about the ability of new member applicants to supervise adequately a disqualified person. Furthermore, FINRA believes this amendment would conform to the proposed new membership application rule (FINRA Rule 1113), discussed above, by precluding new member applicants from being able to sponsor disqualified persons.[11]

Second, the proposed rule change would amend the definition of "disqualified member"[12] in the FINRA Rule 9520 Series to clarify that a new member applicant is not eligible to submit an application for relief under the FINRA Rule 9520 Series if the new member applicant itself is subject to a disqualification. FINRA believes a new member applicant should enter FINRA membership free of the supervisory and operating concerns raised by association with a statutorily disqualified person or being itself subject to a statutory disqualification and believes this proposed rule change is consistent with that belief.

Third, the proposed rule change would further amend the definition of "sponsoring member" to preclude any member from sponsoring the association or continued association of a disqualified person, who is directly or indirectly a beneficial owner of more than five percent of the sponsoring member, to be admitted, readmitted, or permitted to continue in association. FINRA believes that a member cannot effectively supervise a disqualified person in light of the inherent conflict of interest resulting from the disqualified person's ownership interest in the member. FINRA believes the proposed amendment to the definition of "sponsoring member" would address this issue.

III. Discussion of Comment Letters

One commenter, Manuel P. Asensio-Garcia, a principal of Asensio & Company, Inc. ("ACO"), submitted a letter opposing the proposed rule change on several grounds.[13] First, the Asensio Letter asserts that the proposed

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and, letter from Manuel P. Asensio-Garcia, to Robert W. Cook, Director, Division of Trading and Markets, dated Dec. 20, 2010 (Because both letters from Mr. Asensio raise substantially the same issues with respect to the proposed rule change, they are addressed in this order as a single comment letter, collectively referred to herein as the "Asensio Letter").

[5] *See* letter from Patricia M. Albrecht, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated Feb. 4, 2011 ("FINRA Response").

[6] *See* 15 U.S.C. 78c(a)(39). Pursuant to Exchange Act Section 3(a)(39), a person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization ("SRO") if such person, among other things: (1) Has been convicted of certain misdemeanors or any felony criminal convictions within the ten years preceding the date of the filing of an application for membership or participation in, or to become associated with a member of, such SRO; (2) is subject to a temporary or permanent injunction (regardless of its age) issued by a court of competent jurisdiction involving at least one of a broad range of unlawful investment activities; (3) has been expelled or suspended from membership or participation in an SRO; or, (4) is subject to an SEC order denying, suspending, or revoking broker-dealer registration.

[7] Proposed FINRA Rule 1113, by its terms, would not apply to a member submitting a continuing membership application pursuant to NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations).

[8] Article I of the FINRA By-Laws defines an "associated person" as a: (1) A natural person who is registered or has applied for registration under FINRA rules; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under its By-Laws or rules; and (3) for purposes of FINRA Rule 8210, any other person listed in Schedule A of Form BD of a member. *See* FINRA By-Laws, Article I (rr) (definition of "person associated with a member" or "associated person of a member").

[9] As previously noted, Article III, Section 4 of the FINRA By-Laws incorporates the definition of "statutory disqualification" as such term is defined in Exchange Act Section 3(a)(39).

[10] FINRA Rule 9521(b)(4).

[11] The proposed rule change also would make conforming amendments throughout the FINRA Rule 9520 Series to reflect the proposed amendment discussed above that a new member applicant may not sponsor a person subject to a disqualification.

[12] FINRA Rule 9521(b)(2).

[13] Asensio Letter.

rule change was an improper attempt to adversely impact a New Member Application Form ("NMA") filed by ACO and concurrent MC–400 application filed by ACO on Mr. Asensio's behalf. In the FINRA Response, FINRA contests this assertion. Specifically, the FINRA Response states that the proposed rule change is a separate policy-driven proceeding based on its belief that a new member applicant should enter FINRA membership free of the supervisory and operating concerns raised by association with a statutorily disqualified person or being itself subject to a statutory disqualification.[14] The FINRA Response further notes that the proposed rule change would apply only to NMAs and applications for relief from a statutory disqualification filed on or after the effective date of the proposed rule change and, consequently, would not impact any applications pending before such effective date.

The Asensio Letter also states that the proposed rule change was unnecessary because FINRA already has authority under its current rules to deny an NMA based on the existence of a statutory disqualification and to deny an MC–400 application based on the fact that a disqualified person is proposing to associate with a new member.[15] The FINRA Response contests this assertion by citing the public policy interests underlying the proposed rule change's objective—to promote initiation of FINRA membership free of statutory disqualification concerns. Moreover, FINRA believes the proposed rule would allow FINRA to conserve regulatory resources that would otherwise be devoted to considering an NMA or MC–400 application that the proposed rule change would preclude at the outset.[16]

The Asensio Letter also states that the proposal would effectively foreclose use of the eligibility proceedings by a disqualified person seeking relief from FINRA sanctions. Specifically, the Asensio Letter states that the eligibility proceedings represent the only avenue for seeking relief outside of an appeal and to effectively use the eligibility proceedings for this purpose, a disqualified person must be able to create a new member applicant to be his sponsor; otherwise, a disqualified person cannot present his arguments for relief free from possible restrictions that could be imposed by a member sponsor.[17] The FINRA Response states that the eligibility proceedings are not the appropriate forum for reviewing sanctions imposed in a formal disciplinary action brought by FINRA; rather, the correct process for an individual to challenge any FINRA-imposed sanctions is set forth in the FINRA Rule 9300 Series (Review of Disciplinary Proceeding By National Adjudicatory Council and FINRA Board; Application for SEC Review).[18] Accordingly, FINRA believes this objection lacks merit.[19]

The second commenter, ASG Securities, did not oppose the proposed rule change but requested that FINRA amend the proposal to (1) extend from ten business days to twenty business days the period in FINRA Rule 9522(a)(3) (Notice Regarding an Associated Person) during which a member may file a Form MC–400A application for itself and an associated person upon receiving a disqualification notice from FINRA staff; and (2) prohibit a disqualified person or entity from financing a member or providing or lending funds to an associated person for re-investment into a member.[20] The FINRA Response states that the commenter's suggestions are outside the scope of the rule proposal; as such, it does not intend to expand the proposal to address these additional issues at this time. However, it will consider whether to propose additional changes at a later date.[21]

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[23] which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In particular, the Commission agrees that a new member applicant should enter FINRA membership free of the supervisory and operating concerns raised by association with a statutorily disqualified person or being itself subject to a statutory disqualification.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–FINRA–2010–056), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4216 Filed 2–24–11; 8:45 am]

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[14] FINRA Response.

[15] Asensio Letter.

[16] FINRA Response.

[17] Asensio Letter.

[18] FINRA Response.

[19] The Asensio Letter also describes the foreclosure of a review of a FINRA-imposed sanction through the eligibility proceedings as "contrary to the most basic ideals of constitutional due process." As referenced above, FINRA believes that the eligibility proceedings are not the appropriate forum for reviewing FINRA-imposed sanctions; however, a process does exist for individuals to challenge a FINRA-imposed sanction. As such, FINRA also believes the Asensio Letter's argument lacks merit.

[20] ASG Letter.

[21] FINRA Response.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78o–3(b)(6).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63934; File No. SR–NYSE–2011–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

February 18, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 14, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2011 Price List ("Price List") for equity

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

transactions by revising the description of the Risk Management Gateway ("RMG") fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for equity transactions by revising the description of the RMG fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages.

On February 12, 2009, the Exchange filed a proposed rule change with the Commission that established the fee for its RMG service to facilitate the ability of Sponsoring Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants.[4] In the Original RMG Fee Filing, the Exchange established a fee of $3,000 per month for the first "Connection" plus $1,000 per month for each additional "Connection." A "Connection" was defined as up to 1,000 messages per second inbound, regardless of the connection's actual capacity.[5] Consequently, if a particular end user's connection has the capacity to support 3,000 messages per second inbound, that end user's connection will be deemed to be three (3) Connections and the charge will be $5,000 per month.

Although it is clear from the Original RMG Fee Filing that the key variable in determining an end user's RMG fee is the capacity in messages per second inbound that the end user's connection will support (*i.e.,* the number of Connections), the descriptive language that was added to the Price List at that time was inartfully worded and could be misinterpreted as basing the monthly RMG fee on the actual number of inbound messages. Consequently, the Exchange is proposing to modify the descriptive language for the RMG fee in the Price List to clarify that the fee is based on message capacity. There will be no change to the pricing itself or the basis on which it is currently calculated.

The Exchange notes that NYSE Arca, Inc. ("NYSE Arca"), in a rule filing with the Commission on September 4, 2009,[6] established a fee for its RMG service that is exactly the same as the Exchange's RMG fee, including the computation of the fee based on message capacity. In the NYSE Arca RMG Fee Filing, the descriptive language that was added to the NYSE Arca Fee Schedule describes much more clearly and unambiguously the basis on which the RMG fee is calculated and the Exchange proposes to replace the current descriptive language in its Price List with the corresponding language from the NYSE Arca Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, since there will be no change to the current RMG fee which has been in effect since February 2009, or how it is calculated, only to the description of the fee for the purposes of adding clarity regarding the basis and calculation of the fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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–NYSE–2011–04 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–NYSE–2011–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[4] *See* Securities Exchange Act Release No. 59430 (February 20, 2009), 74 FR 9014 (February 27, 2009) (File No. SR–NYSE–2009–15) (the "Original RMG Fee Filing").

[5] Original RMG Fee Filing, 74 FR at 9015.

[6] *See* Securities Exchange Act Release No. 60664 (September 14, 2009), 74 FR 48110 (September 21, 2009) (File No. SR–NYSEArca–2009–81) (the "NYSE Arca RMG Fee Filing").

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–04 and should be submitted on or before March 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4226 Filed 2–24–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63935; File No. SR–NYSEAMEX–2011–07]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

February 18, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 14, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2011 Price List for equities ("Price List") by revising the description of the Risk Management Gateway ("RMG") fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for equities by revising the description of the RMG fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages.

On February 12, 2009, the Exchange filed a proposed rule change with the Commission that established the fee for its RMG service to facilitate the ability of Sponsoring Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants.[4] In the Original RMG Fee Filing, the Exchange established a fee of $3,000 per month for the first "Connection" plus $1,000 per month for each additional "Connection." A "Connection" was defined as up to 1,000 messages per second inbound, regardless of the connection's actual capacity.[5] Consequently, if a particular end user's connection has the capacity to support 3,000 messages per second inbound, that end user's connection will be deemed to be three (3) Connections and the charge will be $5,000 per month.

Although it is clear from the Original RMG Fee Filing that the key variable in determining an end user's RMG fee is the capacity in messages per second inbound that the end user's connection will support (*i.e.,* the number of Connections), the descriptive language that was added to the Price List at that time was inartfully worded and could be misinterpreted as basing the monthly RMG fee on the actual number of inbound messages. Consequently, the Exchange is proposing to modify the descriptive language for the RMG fee in the Price List to clarify that the fee is based on message capacity. There will be no change to the pricing itself or the basis on which it is currently calculated.

The Exchange notes that NYSE Arca, Inc. ("NYSE Arca"), in a rule filing with the Commission on September 4, 2009,[6] established a fee for its RMG service that is exactly the same as the Exchange's RMG fee, including the computation of the fee based on message capacity. In the NYSE Arca RMG Fee Filing, the descriptive language that was added to the NYSE Arca Fee Schedule describes much more clearly and unambiguously the basis on which the RMG fee is calculated, and the Exchange proposes to replace the current descriptive language in its Price List with the corresponding language from the NYSE Arca Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, since there will be no change to the current RMG fee which has been in effect since February 2009, or how it is calculated, only to the description of the fee for the purposes

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59429 (February 20, 2009), 74 FR 9016 (February 27, 2009) (File No. SR–NYSEALTR–2009–12) (the "Original RMG Fee Filing").

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 60664 (September 14, 2009), 74 FR 48110 (September 21, 2009) (File No. SR–NYSEArca–2009–81) (the "NYSE Arca RMG Fee Filing").

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

of adding clarity regarding the basis and calculation of the fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

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–NYSEAmex–2011–07 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–NYSEAmex–2011–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–07 and should be submitted on or before March 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4227 Filed 2–24–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7347]

In the Matter of the Designation of Sect of Revolutionaries also known as SE also known as Sekhta Epanastaton also known as Sekta Epanastaton also known as Secta Epanastaton also known as Revolutionaries Sect also known as Rebel Sect also known as Armed Struggle for Revolutionary Independence Sect of Revolutionaries as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as Sect of Revolutionaries, also known as SE, also known as Sekhta Epanastaton, also known as Sekta Epanastaton, also known as Secta Epanastaton, also known as Revolutionaries Sect, also known as Rebel Sect, also known as Armed Struggle for Revolutionary Independence Sect of Revolutionaries, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 22, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–4275 Filed 2–24–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2011–0011]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is forwarded to the Office of Management and Budget OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 20, 2010 (Citation 75 FR 79438). No comments were received from that notice.

DATES: Comments must be submitted before March 28, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Charter Service Operations (*OMB Number: 2132–0543*)

Abstract: 49 U.S.C. 5323(d) requires all applicants for financial assistance from FTA to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR 1.51(a)). 49 U.S.C. 5323(d) provides protections for private intercity charter bus operators from unfair competition by FTA recipients. 49 U.S.C. 5302(a)(10) as interpreted by the Comptroller General permits FTA recipients, but does not state that recipients have a right, to provide charter bus service with FTA-funded facilities and equipment only if it is incidental to the provision of mass transportation service. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144 (2005), amended 49 U.S.C. 5323(d) with respect to remedies, provides that:

> "In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement."

In addition, the Joint Explanatory Statement of the Committee of Conference, for Section 3023(d), "Condition on Charter Bus Transportation Service" of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144 (2005) directed FTA to "initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d)."

In response to the direction contained in the Conference Committee Report, FTA established a Federal Advisory Committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding charter bus services. On January 14, 2008, FTA published its final rule (73 FR 2326) amending the regulations which govern the provision of charter service. These regulations are implemented at 49 CFR Part 604. Changes to Part 604 include clarification of the existing requirements, a newly defined "charter service," replacement of the "willing and able" process for the electronic registration of private charter providers, and the establishment of more detailed complaint, hearing, and appeal procedures.

Section 604.4 requires all applicants for federal financial assistance under 49 U.S.C. 5301 *et seq.,* and 23 U.S.C. 103(e)(4), 142(a), and 142(c) to enter into a "Charter Service Agreement," contained in the Certifications and Assurances for FTA Assistance Programs, unless exempt under 49 CFR 604.2 or otherwise falls under an exception in 49 CFR Part 604. The Certifications and Assurances become a part of the Grant Agreement or Cooperative Agreement for federal assistance upon the recipient's receipt of federal funds.

The January 14, 2008, amendments to 49 CFR Part 604 added Section 604.14, which requires that a recipient give email notification to registered charter providers in the recipient's geographic service area upon receiving a request for charter service that the recipient is interested in providing pursuant to § 604.9. In addition, 49 CFR 604.12 requires that the recipient submit the records of all instances that it has provided charter service permitted under one or more of the exceptions under Subpart B of Part 604 to the charter registration Web site 30 days after the end of each calendar quarter. The recipient must also maintain the required notices and records electronically for three years from the date of the service or lease of FTA funded equipment and/or drivers.

In order for a private charter operator to become a registered charter provider, the private charter operator must register on FTA's charter registration Web site, which can be found at *http://www.fta.dot.gov/laws/leg_reg_179.html.* Under 49 CFR 604.13, a registered charter provider must update its information on the charter registration Web site at least once every two years.

The January 14, 2008, final rule also added 49 CFR 604.7, allowing recipients to provide charter service to qualified human service organizations (QHSO) under limited circumstances. QHSOs seeking to receive free or reduced rate services from recipients and do not receive federal funding under programs listed in Appendix A to Part 604 must register on FTA's charter registration Web site (49 CFR 604.15(a)).

Estimated Total Annual Burden: 1,819 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued On: February 17, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–4204 Filed 2–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2011–0020]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 26, 2011.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA–2011–0020 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail: Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. *Telephone:* 1–800–647–5527.

• *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *Please see* the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: George Stevens, NHTSA 1200 New Jersey Avenue, SE., Room W43–490, Washington, DC 20590. Mr. Steven's telephone number is (202) 366–5308. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR Part 556, Petitions for Inconsequentiality.

OMB Control Number: 2127–0045.

Affected Public: Businesses or other for profit entities.

Abstract: If a motor vehicle or item of replacement motor vehicle equipment is determined to contain a defect related to motor vehicle safety or not to comply with an applicable Federal motor vehicle safety standard (FMVSS), the manufacturer is required under 49 U.S.C. 30118 to furnish NHTSA and owners, purchasers, and dealers of the motor vehicle or equipment with notification of the defect or noncompliance. The manufacturer must also remedy the defect or noncompliance without charge under 49 U.S.C. 30120.

A manufacturer may be exempted from these requirements under 49 U.S.C. 30118(d) if the agency decides, upon application of the manufacturer, that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. That section provides that the agency may only take such action after publishing notice in the **Federal Register** and providing an opportunity for any interested person to present information, views, and arguments.

Regulations implementing this provision are found in 49 CFR part 556 *Exemption for Inconsequential Defect or Noncompliance.* The regulations provide that "the effect of a grant of a petition is to relieve the manufacturer from any further responsibility to provide notice and remedy of the defect or noncompliance." *See* 49 CFR 556.7.

The regulations further provide that each petition submitted under part 556 must:

(1) Be written in the English language;

(2) Be submitted in three copies to NHTSA;

(3) State the full name and address of the applicant, the nature of its organization (*e.g.,* individual, partnership, or corporation) and the name of the State or county under the laws of which it is organized;

(4) Describe the motor vehicle or item of replacement equipment, including the number involved and the period of production, and the defect or noncompliance concerning which an exemption is sought, and

(5) Set forth all data, views, and arguments of the petitioner supporting the petition.

See 49 CFR 556.4(b).

The regulations also provide that the petition must be accompanied by three copies of the report of the defect or noncompliance that the manufacturer has compiled for submission to NHTSA under 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports,* and be submitted no later than 30 days after the manufacturer determines the existence of the defect or noncompliance or is notified that NHTSA has determined the existence of the defect or noncompliance. *See* 49 CFR 556.4(b)(6) and (c).

The agency receives, on average, 30 petitions per year seeking exemptions under part 556 for an inconsequential defect or noncompliance. The agency estimates that it would take, on average, five hours for a manufacturer to compile, organize, and submit the information needed to support each petition.

Estimated Annual Burden: 150 hours.

Number of Respondents: 30.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 16, 2011.

Claude H. Harris,

Acting Associate Administrator, for Enforcement.

[FR Doc. 2011–4207 Filed 2–24–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–2010–00062]

Consumer Information; Program for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: On April 24, 2009, DOT announced that NHTSA would establish a new consumer information program, as part of the New Car Assessment Program, to help caregivers find a child restraint system ("child safety seat") that fits their vehicle. Under the program, NHTSA will make available information from vehicle manufacturers as to the specific child safety seats the manufacturers recommend for individual vehicles. This document primarily details observations from an agency pilot study conducted to determine reasonable conditions for participation in such a program. It also proposes a set of forms comprised of objective criteria which vehicle manufacturers can use to identify child safety seats that fit their vehicles. The agency anticipates that this program will make it easier for caregivers to select a child safety seat that fits in their vehicle.

DATES: Comments should be submitted early enough to ensure that they are received no later than March 28, 2011.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Fax: 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For non-legal issues related to the Vehicle-Child Restraint System (CRS) Fit program, you may contact Ms. Jennifer N. Dang, Office of Crashworthiness Standards (Telephone: 202–493–0598). For legal issues, you may contact Ms. Deirdre Fujita, Office of Chief Counsel (Telephone: 202–366–2992). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

Child restraint systems (CRS) are very effective at protecting children sitting in vehicles that are involved in motor vehicle crashes. Nonetheless, past studies have shown that installation mistakes that reduce or negate the effectiveness of CRS still occur frequently. Instances of misuse for child restraints can be attributed to user error or to incompatibilities between the child restraint and the vehicle. To address misuse due to user error, NHTSA conducts a CRS Ease of Use (EOU) program. To address the need for increased compatibility, DOT announced, on April 24, 2009, that NHTSA would establish a new consumer information program, as part of the New Car Assessment Program, to help caregivers find a child restraint system that fits their vehicle.

The agency believes that this program will (1) provide consumer service by offering guidance on vehicle-CRS matchups, (2) complement NHTSA's Ease of Use program, 4 Steps for Kids consumer information campaign, as well as other child passenger safety initiatives, and (3) encourage child restraint and vehicle manufacturers to work together to address the need for increased compatibility.

This document outlines factors that the agency deemed significant to the development of a Vehicle-CRS Fit program and details observations from an agency pilot study conducted to determine reasonable conditions for participation in such a program. It also proposes a set of forms comprised of objective criteria that vehicle manufacturers can use to identify child safety seats that fit their vehicles. In developing the proposed evaluation forms, the agency considered general installation techniques that are required for all CRS installations, specific installation techniques and other factors that apply to certain types of CRS or particular modes of use, and vehicle features that may influence proper CRS

fit. Under the program, NHTSA will disseminate a list of child restraints that manufacturers suggest will fit in their individual vehicles on Safercar.gov.

To participate in the program, vehicle manufacturers shall recommend at least three current model year child restraints within each of three different CRS categories (rear-facing, forward-facing, and booster). For the forward-facing category, at least one high-weight harness CRS shall be recommended, and for the booster category, no more than one of the three recommended booster seats may be a dedicated backless booster. Additionally, the three recommended CRS for each of the three CRS categories shall be from three different CRS manufacturers and shall also meet three established price points (inexpensive, moderately-priced, and expensive) based on the child restraint's Manufacturer's Suggested Retail Price. To ensure recommended CRS satisfy the proposed fit evaluation criteria, the agency is also proposing to conduct its own assessments to spot-check fit for recommended vehicle-CRS combinations.

The agency is proposing this program for voluntary participation by vehicle manufacturers and is seeking comment on all of its aspects.

II. Introduction

NHTSA is primarily responsible for reducing deaths, injuries, and economic losses as a result of motor vehicle crashes. Child safety seats, technically referred to as child restraint systems (CRS) by Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," are widely agreed to be the most effective motor vehicle safety equipment available for restraining children. Although parents and caregivers strive to protect their children in motor vehicles, unfortunately, statistics on CRS misuse reveal that installation mistakes still happen with considerable frequency. A 2004 study conducted with the support of NHTSA estimated that errors in installation, identified as critical errors by the study, occur at a high rate of 72.6 percent.[1] While this study found the most common reasons for misuse to be loose harness straps securing the child to the CRS and loose vehicle seat belt attachment to the CRS, other types of misuse were also observed. Though instances of misuse such as loose vehicle seat belts can be attributed to user error, in some cases it may also be attributed to incompatibilities between the CRS and the vehicle. Due to the variety of vehicle and child restraint features in the U.S. market, some combinations of child restraints and vehicles make proper installation more difficult to achieve.

In the spring of 2009, the Secretary of Transportation tasked the agency with conducting a top-to-bottom review of child restraint regulations and consumer information. As a result of this internal review, the agency determined that while CRS are effective at protecting children, more can be done to improve their performance. Several agency initiatives were developed toward that end. Several programs pursue upgrading FMVSS No. 213 by adding side impact requirements to the standard, and by evaluating future improvements to its frontal impact requirements.

In addition, a new consumer information initiative was begun to enhance the ease with which parents and caregivers can choose a CRS for their vehicle, knowing that the CRS will fit their vehicle when installed. Under the program, NHTSA will make available recommendations from vehicle manufacturers as to the specific child safety seats, in various price ranges, that fit in individual vehicles. NHTSA believes that providing parents with information about which child restraints fit in their vehicle(s) will improve consumers' confidence in and comfort with using CRSs, and will reduce installation mistakes.

This document describes the agency's efforts to develop, pilot test, and propose a Vehicle-CRS Fit program for consumer information purposes. The agency is proposing this program, which will be part of NHTSA's New Car Assessment Program (NCAP), for voluntary participation by vehicle manufacturers and is seeking comment on all of its aspects. Vehicle manufacturers who wish to participate could use finalized versions of the evaluation forms provided in this document as a means of determining whether a particular CRS meets the agency's criteria for fit in their vehicles. Once a vehicle manufacturer has determined that a child restraint satisfies the agency's criteria for fit, it may submit this information to NHTSA for publication on the agency's consumer information Web site, *http://www.safercar.gov*.[2]

III. The Current Child Safety Problem

Child restraints reduce fatal injury by 71 percent for children less than 1 year old and by 54 percent for toddlers (1–4 years old) in passenger cars.[3] Similarly, in light trucks, the corresponding reductions are 58 and 59 percent for infants and toddlers.

The agency, along with manufacturers, local governments, and consumer groups, have consistently urged the public to put all children in age-appropriate restraints in the rear seats of vehicles. In recent years, many States have also passed child restraint and booster seat laws, which require children to travel in approved restraints for their age.[4] These education and regulatory efforts are working; over the past decade, the percentage of unrestrained child fatalities has decreased significantly: 23 percent in 2008 [5] compared to 43 percent in 1998.[6] In June of 2009, NHTSA published a Research Note that provided more detailed demographic information about child restraint use. In a national probability sample of gas stations, day care centers, recreation centers, and restaurants in five fast food chains, it determined that 99 percent of children under age 1, 92 percent of children from ages 1 to 3, 89 percent of children ages 4 to 7, and 85 percent of children ages 8 to 12 were restrained.[7]

Tragically, in 2008, there were still 297 passenger vehicle occupant fatalities among children under 4 years of age. Restraint use was not known for all of these fatalities, but of the 282 children whose restraint use was known, 94 (32 percent) of those children were unrestrained. In the same year, however, an estimated 244 lives of children under age 5 were saved by proper restraint use. Of these lives saved, 219 were attributed to the use of child restraints and 25 to the use of adult safety belts. If 100 percent restraint use for children under age 5 had been attained in 2008, the agency estimates that 79 additional lives, for a total of 323 children, could have been saved that year.[8]

[1] Decina L.E. and Lococo K. H. (2004). *Misuse of Child Restraints.* NHTSA Publication No. DOT HS 809 671, Page 2.

[2] As part of the program, NHTSA will spot-check the fit of CRSs in vehicles to make sure that the information is accurate.

[3] *Traffic Safety Facts 2007: Occupant Protection,* DOT HS 810 991, National Center for Statistics and Analysis, 1200 New Jersey Ave, SE., Washington, DC 20590, Page 4.

[4] *http://www.iihs.org/laws/ChildRestraint.aspx.*

[5] *Traffic Safety Facts 2008: Children,* DOT HS 811 157, National Center for Statistics and Analysis, 1200 New Jersey Ave, SE., Washington, DC 20590, Page 4.

[6] *Traffic Safety Facts 1998: Children,* DOT HS 808 951, National Center for Statistics and Analysis, 400 7th Street, SW., Washington, DC 20590, Page 4.

[7] *Traffic Safety Facts: Child Restraint Use in 2008—Demographic Results,* NHTSA Publication No. DOT HS 811 148, National Center for Statistics and Analysis, 1200 New Jersey Ave, SE., Washington, DC 20590, Pages 2–5.

[8] *Traffic Safety Facts 2008: Occupant Protection,* DOT HS 811 157, National Center for Statistics and

IV. NHTSA's CRS Activities

When a parent or caregiver is seeking information regarding a new CRS purchase, the agency's guidance is that a caregiver should select a restraint that is certified as meeting FMVSS No. 213, fits the child, can be used correctly every time, and can achieve a proper installation in the vehicle in which it will be used. The agency addresses these recommendations in the following ways:

• All child restraints sold in the United States must comply with the requirements in FMVSS No. 213. This standard contains dynamic frontal impact sled tests as well as strict labeling and component durability and strength requirements. All child restraints are evaluated on a pass-fail basis. Test dummies representing newborn, twelve-month-old, three-year-old, and six-year-old children are secured in age-, height- and weight-appropriate CRS to evaluate their dynamic performance. The latter three dummies are instrumented and must meet HIC (Head Injury Criterion), head excursion, and chest acceleration requirements when subjected to the 213 test. FMVSS No. 213 also specifies knee excursion requirements for CRS tested with the three-year-old and six-year-old dummies, and additional structural durability and requirements with which all CRS must comply.

• To ensure that consumers choose a child restraint that fits their child, the agency created its *4 Steps for Kids* consumer information campaign. This initiative arranges the agency's child passenger safety message into four phases, or "steps," of a child's development. The first three "steps" are CRS-related guidelines that explain to consumers how to properly transition children from rear-facing restraints to forward-facing restraints and finally to belt-positioning boosters. The fourth "step" provides information on when it is appropriate for children to transition into rear seat adult lap/shoulder belts. Choosing age-, height-, and weight-appropriate restraints for children throughout their development reduces their risk of injury in a crash.

• As mentioned earlier in the introduction, high rates of misuse for child restraints have been observed. To address this concern, along with child restraint usability, the agency conducts a CRS Ease of Use (EOU) program. The agency published a Final Notice announcing the EOU program in November of 2002.[9] This program created child restraint usability ratings based on five categories: Ease of Assembly, Clarity of Labeling, Clarity of Instructions, Ease of Securing the Child, and Ease of Securing the CRS in the Vehicle. Substantial improvement in CRS usability features was observed: Only 57 percent of child restraints received the top rating when the program began, and by 2007, 81 percent of child restraints received the top rating. In 2008, the program was updated to reflect changes in the CRS fleet by: Amending certain criteria, re-distributing the Ease of Assembly criteria category among the remaining four, and converting to a five-star rating system instead of the previous three-letter rating system.[10] The agency continues to add child restraint usability ratings to the list each year. As of December 2009, ratings for 128 child restraints were available.[11] Child restraints are evaluated separately from vehicles through this program, but certain facets of the program relate to vehicle installation. The "Ease of Securing the CRS in Vehicle" category addresses features on the child restraint that aid in vehicle installation. For example, built-in seat belt lock-offs [12] eliminate the need for a locking clip in many instances. Wider belt paths allow the caregiver to more easily route the seat belt or lower attachment belt through the belt path, and push-button lower anchor connectors may be pushed on and removed with the touch of a button. Features such as these lessen the effort required to install a child restraint and are, in many cases, accommodated by the vehicle.

• The agency also conducts several other child passenger safety initiatives. NHTSA maintains the content of the National Child Passenger Safety Certification curriculum through partnerships with respected child passenger safety experts.[13] This certification program is estimated to have trained tens of thousands of interested individuals to become Child Passenger Safety Technicians (CPSTs). During this certification, individuals learn how to properly install a large variety of child restraints and how to assist parents and caregivers in doing so themselves. CPSTs are an especially valuable resource to the agency because they can provide information to the caregivers at the community level. The curriculum is monitored and updated as necessary based on changes to the CRS fleet and best practice methodology.[14] The agency also manages National Child Passenger Safety Week, an annual campaign during which community organizations across the country host safety seat checkups and other child passenger safety awareness events.

NHTSA's major child passenger safety initiatives (FMVSS No. 213, *4 Steps for Kids,* Ease of Use, and the CPST Curriculum) help parents and caregivers select an age-, height-, and weight-appropriate CRS that is simple to use and that is safe. However, the agency has recognized for some time that because of incompatibility issues between the vehicle and the CRS, parents and caregivers may still have difficulty not only selecting a CRS that fits their vehicle(s), but also properly installing selected child restraints in their vehicle(s). The CPST Curriculum may also not reach the general public. Accordingly, the agency has taken several steps to address vehicle-CRS compatibility issues.

V. Addressing Vehicle-CRS Compatibility

A. Consumer Information

To date, the agency's attempts at developing a consumer information program that addresses vehicle-CRS compatibility issues have encountered a number of challenges. One of the most difficult issues the agency has had to resolve is how to manage the enormous amount of information that can be generated on the dozens of CRSs and vehicles on the market and the possible interface between each CRS and each vehicle model.

In the fall of 1995, NHTSA tried to develop a vehicle and child restraint database. At the time, the agency surmised that a vehicle-CRS matrix could be distributed via CD–ROM to caregivers, child passenger safety advocates, and any other parties that educate the public about proper child restraint use. The resulting matrix was intended to be all-inclusive; information on specific child restraints would be coupled with details about vehicle makes, models, and available seating positions in which they could be successfully installed. However, during the database development, the agency

Analysis, 1200 New Jersey Ave, SE., Washington, DC 20590, Page 4.

[9] 67 FR 67448, Docket NHTSA–2001–10053.

[10] 73 FR 6261, Docket NHTSA–2006–25344.

[11] Ease of Use Ratings can be found either in Docket NHTSA–2006–25344 or at *http://www.nhtsa.gov/portal/nhtsa_eou/.*

[12] Some child restraints have built-in devices for locking the vehicle seat belt in place so that the retractor or separate locking clips do not have to be used.

[13] These experts include members of The National Child Passenger Safety Board, AAA, Safe Kids Worldwide, The Children's Hospital of Philadelphia, vehicle and CRS manufacturers, and others.

[14] CPST best practice methodology is considered the most acceptable way to transport a child safely on the basis of the child's age, weight, height, and body development.

determined that its initial work toward providing information on the compatibility of 35 CRS with 100 vehicles from model years 1993–1996 was overly ambitious. The sheer number of vehicle/CRS combinations made the data collection efforts overwhelming, especially considering that the agency was only working with a subset of the entire vehicle and CRS fleets. The initial matrix was also limited in its usefulness; the data applied only to the specific combinations of vehicles and child restraints listed. Because the development of the database proved unworkable, and because adoption of a standardized CRS attachment system was under consideration, the agency decided to discontinue its efforts to develop a vehicle-CRS matrix.

B. LATCH

On March 5, 1999, the agency issued a final rule establishing FMVSS No. 225, "Child restraint anchorage systems." This standard, which became fully effective on September 1, 2002, required the *L*ower *A*nchors and *T*ethers for *CH*ildren (LATCH) system in most passenger vehicles and compatible hardware components on child restraints. A "LATCH" system is comprised of a set of small bars (known as lower anchors) located near the seat bight, and a third attachment point (known as a top tether anchor) located above or behind the vehicle seat. FMVSS No. 225 requires a LATCH system to be installed at two rear seating positions on vehicles, and a top tether anchor at a third position. The final rule also amended FMVSS No. 213 to require child restraints to be equipped with attachments that mate with vehicles' lower anchors.

The intention of the rulemaking was to provide an easy-to-use CRS attachment system that is independent of the vehicle seat belts. Through LATCH, incompatibility problems were reduced, and CRS installation made more intuitive and more effective.

LATCH successfully resolved some of the compatibility problems that users experienced with seat belts. In most vehicles, child restraints can be installed using LATCH successfully. In a 2006 NHTSA survey, loose installation rates of child restraints had decreased from previous studies: Sixty-one percent of child restraints were securely installed using LATCH in the 2006 study, whereas a 2004 study examining incorrect installations with seat belts found only up to forty-six percent of child restraints were securely installed.[15] The report concluded that there are two main reasons for this development: The absence of locking clips and the simplified process of fastening the LATCH attachments to the vehicle anchors. Many caregivers prefer using LATCH over seat belts when possible. Of those surveyed with experience using both LATCH and a seat belt, seventy-five percent preferred LATCH. Fifty-five percent of those who did not use LATCH were either unaware that lower anchors were available in their vehicle or were unsure how to use them.[16]

In short, the LATCH system has successfully provided caregivers with an alternative to seat belts installations. Caregivers using LATCH to install their child restraint no longer have to remember a host of additional seat belt installation steps such as locking the vehicle seat belt when installing the child restraint. They also do not have to wrestle with seat belt geometry incompatibilities such as buckle stalk lengths and anchor points.

VI. Considerations for Development of a New Consumer Information Program To Address Vehicle-CRS Compatibility

NHTSA is committed to improving vehicle-CRS compatibility and providing better consumer information. LATCH has improved the ease with which a CRS can be installed in a vehicle; however, it does not standardize the contours of the vehicle seat or the footprint of the CRS. Consequently, some child restraints might fit a particular vehicle better than other child restraints. Getting parents to select a restraint that is known to fit their vehicle ensures that they begin the installation process with a higher potential for success and level of efficiency in attaining a correct installation. It can also reduce their frustration and confusion. For these reasons, the agency has decided to develop and propose a consumer information program to address CRS fit in vehicles.

The agency hopes that a program that focuses on vehicle-CRS compatibility will drive not only improved vehicle designs, but perhaps improved CRS designs, too, as child restraint and vehicle manufacturers will likely have to work together to address the need for increased compatibility. Changes to CRS footprints, redesigned belt paths, and more LATCH-friendly hardware are a few of the design changes that could be introduced as a result of compatibility-focused efforts. Although the agency realizes that implementation of such changes may take time, we believe that voluntary design improvements will nonetheless occur due to the increased cooperative efforts between vehicle and CRS manufacturers to improve vehicle-CRS compatibility.

To best serve consumers, the agency believes that any program designed to assess vehicle-CRS compatibility should complement and supplement other child restraint and vehicle information it promulgates. Such a program should also result in a robust, repeatable assessment so that it is effective at not only helping parents and caregivers choose a child restraint that fits their vehicle(s), but also, in turn, helps deter misuse and frustration stemming from incompatibilities. We believe this can best be achieved by developing a program that is based solely on objective criteria. A program based on objective criteria should be simpler for manufacturers and evaluators to understand and use compared to one based on subjective assessments. Establishing objective assessment criteria should also help to minimize manufacturer concerns that consumers selecting a recommended CRS may still have difficulty fitting the CRS in their vehicle(s). This may promote increased voluntary participation as a result and ultimately provide consumers with the CRS information that they need.

VII. Review of Worldwide Child Restraint Consumer Information Programs

In developing a program that would assist consumers in finding a child restraint that fits in their vehicle(s), NHTSA examined other child restraint-related consumer information and rating programs internationally and did not find a system that met all of the agency's needs.[17] However, a portion of a draft ISOFIX usability standard developed by the International Standards Organization (ISO) was found to be most relevant.[18]

[15] Decina, L.E., Lococo, K.H., Doyle, C.T., *Child Restraint Use Survey: LATCH Use and Misuse,* NHTSA Publication No. DOT HS 810 679, National Highway Traffic Safety Administration, December 2006, Page 2.

[16] Additionally, it was found that caregiver preference played a large role in LATCH use. For example, even though the CRS may technically fit in the vehicle seat, the caregiver may find that locating the LATCH anchors is difficult due to stiff vehicle cushions or the deep placement of anchors within some vehicles' seat bights. Others may simply be more comfortable using the seat belt to install the child restraint because of prior experience with that method of installation; others may simply assume that the seat belt is safer.

[17] The agency's review of child restraint consumer information programs is included as Appendix A.

[18] ISO is a collection of organizations from 162 countries responsible for establishing world-wide voluntary industry standards. Representatives from

In 1999, ISO published a draft standard outlining specifications for a rigid anchor system, known as "ISOFIX," for attaching child restraints to vehicles. In 2004, it also developed a draft standard on tether anchorages and their acceptable locations in vehicles. Together, these two draft standards outlined the requirements for a dedicated in-vehicle CRS installation system that is very similar to the U.S. LATCH system. In addition, ISO has since drafted rating forms for evaluating the usability of vehicle ISOFIX designs with different child restraints.[19] The intent of these ratings forms is to assess the usability of a particular vehicle's ISOFIX system as well as a particular child restraint's installation features (which is similar to, but not as comprehensive as, the agency's current Ease of Use program). In addition, the forms also assess the interface between that vehicle and CRS when the user actually performs an installation.

Of all the consumer information and ratings programs the agency examined, the ISO draft standard most closely fit the agency's needs because of its unique assessment of the installation interface between a CRS and a vehicle. However, the agency was not able to draw extensively from the draft ISO usability standard for the proposed Vehicle-CRS Fit program for a number of reasons. For instance, in light of its comprehensive Ease of Use program, the agency did not see a need for including a CRS usability evaluation as a part of this Vehicle-CRS Fit program, nor did the agency feel that inclusion of criteria pertaining to the usability of CRS attachment hardware was warranted. Adopting a program that evaluates the actual vehicle-CRS interface would effectively address certain ISO criteria related to the usability of CRS attachment hardware in vehicles because the attachment hardware may generate installation issues, such as instability, that can prohibit a child restraint from fitting properly in a vehicle. Some of the ISO criteria also incorporate the ease of performing tasks related to the installation, and many of these are then designated "good," "average," or "poor." For the proposed program, the agency wanted to include only objective installation criteria that pertain to proper fit, *i.e.,* whether a proper fit was achieved, not the ease of attaining that fit. In addition, the ISO draft rating forms only evaluate ISOFIX installations. The agency wanted a program that assessed both LATCH and seat belt installations. Finally, the ISO draft standard does not cover booster seats either, and the agency wanted to include these in its Vehicle-CRS Fit program since they are an important part of its child passenger safety initiatives.

these countries have helped publish over 17,500 international standards on various technical subjects, products, and processes.

[19] ISO/DIS 29061–1. *Road vehicles—Methods and criteria for usability evaluation of child restraint systems and their interface with vehicle anchorage systems.*

VIII. Conditions for Participation, Program Administration, and Distribution

Observations from an agency pilot study confirmed that installation issues can arise from either the child restraint or the vehicle, and can also be vehicle-CRS interface specific. For some vehicles, the same fit problem was observed when installing several different CRS types (infant, convertible, combination, booster, *etc.*) and models of child restraints. Considering that these same child restraints could be properly installed in several other vehicle models, it appears that for the vehicle models in which the subject child restraints would not fit, design changes to accommodate a greater number of CRS models would be appropriate. In some instances, inadequate fit was observed for every seat belt or LATCH installation for every child restraint installed in a vehicle. Therefore, it is likely that manufacturers of such vehicles would need to make changes to improve fit for both LATCH and seat belt installations to have information included in the consumer information program described today. Additionally, it was found that certain vehicle features may prohibit the installation of certain types of CRS in certain seating positions. Consequently, it may not be reasonable for vehicle manufacturers to claim that a child restraint fits in all applicable seating locations within a vehicle. Furthermore, space constraints, particularly for smaller vehicle models, may dictate the position of a vehicle's front seats or rear seating positions that are acceptable for installation of certain CRS.

A. Conditions for Participation in the Vehicle-CRS Fit Program

In the interest of time and the need for improved consumer information, the agency is proposing that this program begin as a voluntary effort in MY 2012 for vehicle manufacturers only; however we are seeking comment on whether more time is needed. We believe that consumers will shop for a CRS having their vehicle already in mind, so it would be most reasonable for the fit program to be vehicle-based. The agency also believes gaining access to vehicles is more difficult and burdensome for child restraint manufacturers than it is for vehicle manufacturers to gain access to child restraints. However, the agency does not think that child restraint manufacturers should be excluded from the vehicle-CRS fit efforts; in fact, the contrary is true. NHTSA highly encourages vehicle and child restraint manufacturers to work together to complete these fit assessments. However, at this time, the agency will only collect vehicle-child restraint fit suggestions from vehicle manufacturers.[20]

The agency is proposing that vehicle manufacturers should install child restraints in their vehicles, and while doing so, should bear in mind the considerations outlined throughout this document, and use the evaluation forms included in Appendix D (once they are finalized) to assess CRS fit in their vehicles. For a manufacturer to indicate that a specific child restraint fits in a particular vehicle, the child restraint must be assessed in all applicable modes of use and in all appropriate seating positions in the vehicle. Depending on the restraint, modes of use can include, but are not limited to: Rear-facing, forward-facing, booster (high-back and backless), with and without a base, and with both "short" and "long" belt paths, where applicable. Child restraints that manufacturers determine fit a vehicle must fit in every appropriate seating location in the vehicle. For most passenger cars, appropriate seating positions will include those in the rear or second row; however, additional rows of seating must also be assessed, if applicable.

Because of the agency's continuing efforts to ensure that children ride in the rear seat, the agency does not expect manufacturers of vehicles with rear seats that can accommodate child restraints to provide fit suggestions for the front right passenger seat.[21] For two-

[20] Vehicle-CRS fit recommendations will be accepted only for those vehicles having Gross Vehicle Weight Ratings (GVWRs) of 10,000 lbs. or less, as this program is intended to supplement NCAP, which limits testing to vehicles having GVWRs of 10,000 lbs. or less.

[21] The agency understands that in some cases, such as in transporting four children in a vehicle with only five seating positions, forward-facing restraints or booster seats may be correctly installed in the front right passenger seat. However, as the agency wants to encourage that children be properly restrained in the rear of the vehicle unless the vehicle in which they are traveling does not have a rear seating location, the agency does not want to suggest to parents and caregivers that the front seat is an acceptable travel position for younger occupants by providing vehicle-CRS fit recommendations for this seat. Therefore, the agency does not expect vehicle manufacturers to

Continued

seaters and pickup trucks without a rear seat that have an air bag on-off switch, however, we believe that it would be appropriate to indicate child restraints that fit the front right passenger seat.

The agency is proposing to not permit manufacturer recommendations of child restraints or boosters that fit in only certain seating positions or rows in the vehicle. The agency feels that parents and caregivers who purchase a child restraint for their vehicle based on this program should have the option to use it in all appropriate seating locations. This is especially important when the family grows and child restraints are often moved from the center to the two outboard seating positions or from the second to the third row. However, the pilot study showed that it may be difficult for vehicle manufacturers to meet this condition for participation. In a number of cases, an excellent fit was possible in outboard seating positions, but not in the center position, or vice-versa. Accordingly, although the agency tentatively believes that this stipulation is necessary, we are requesting comment on whether we should permit a CRS to be identified by the vehicle manufacturer as fitting its vehicle even if the CRS does not fit in all seating positions. Although we would like eventually to list only those child restraints that fit unconditionally in vehicles, should we accept, at this point in the program, a listing of CRSs that fit in only certain seating positions? Limitations on CRS use in the vehicle could be noted on Safercar.gov. We question whether requiring that a CRS fit all seating positions in all rows (except the driver's seat row) may result in reduced vehicle manufacturer participation in the short term and no CRS being listed for a number of vehicles on Safercar.gov.

Although vehicle manufacturers must ensure that recommended child restraints fit for all applicable modes of their use, the agency has tentatively decided to allow the manufacturer to specify that a child restraint fits when installed with either LATCH or the vehicle seat belts (plus top tether, if applicable). Of course, it is most ideal for a child restraint to fit correctly using either method of installation. However, the agency's pilot study revealed that requiring both methods for this program would make it difficult for many manufacturers to participate. Depending on the vehicle design, either a LATCH or seat belt installation was found to be problematic for many of the CRS selected for the pilot study, but not necessarily both.

The agency feels that giving the vehicle manufacturers the option to assess fit for either LATCH or seat belt installations will likely result in better participation and useful information for consumers. This approach can alert consumers to incompatibilities related to LATCH anchor spacing, seat belt length, buckle stalk length, *etc.,* that they may not have been otherwise aware of, hopefully decreasing the number of incorrect installations in the field. The agency also suspects that some vehicle manufacturers will be interested in making design changes to increase the number of child restraints that can achieve a proper installation in their vehicle(s) with either LATCH or seat belts. The agency recognizes, however, that making vehicle improvements to either system can require some lead time. Consequently, in the interim, manufacturers can provide consumers with fit suggestions based on either child restraint installation method.

The agency is also proposing that to participate in the Vehicle-CRS Fit program (*i.e.,* to have the CRS information included on Safercar.gov), vehicle manufacturers need to identify at least three current model year child restraints within each of three different categories: rear-facing, forward-facing, and booster. We are proposing to condition participation on listing restraints in all type/age categories as a way to encourage manufacturers to address systematically and comprehensively the issue of CRS fit for all ages and sizes of children. These categories were also chosen because they follow NHTSA's *4 Steps for Kids* program.

Child restraints within each of the three type/age categories should also be from three different child restraint manufacturers. This condition for participation is being proposed to encourage vehicle manufacturers to work with a variety of child restraint manufacturers and products. It will also discourage a vehicle manufacturer from forming partnerships with only one child restraint manufacturer and thus minimize consumer confusion or belief that only one brand of child restraint is acceptable for use in their vehicle. Also, NHTSA believes that this condition may give manufacturers with low volume child restraint models the opportunity to gain additional exposure. To satisfy the booster category, we are proposing that no more than one of the three booster seats can be a dedicated backless booster. This condition is being proposed for a few reasons. For one, most backless boosters have higher minimum height and weight requirements than their high-back counterparts. Therefore, requiring more high-back boosters in order to participate serves to cover a greater range of child sizes. In addition, some high-back boosters are designed such that the back can eventually be removed and used as a backless booster when the child reaches a certain height. In this, there are a number of products on the market that are both styles in one and would have to be evaluated for fit in both high-back and backless modes anyway. Further, the agency suspects that due to their increased complexity, high-back boosters will likely exhibit more fit complications.

The agency is tentatively proposing to not permit vehicle manufacturers to recommend fewer than three child restraints for any one of the three categories (rear-facing, forward-facing, and booster); recommendations of only one or two child restraints for any one category will not be posted on Safercar.gov. The agency questions whether this approach is appropriate or whether providing one or two recommendations for any one category may better serve consumers than providing no CRS recommendations for a particular category. Comments are requested on this issue.

Since it is generally advisable for parents to keep children in a harness for as long as possible to ensure the highest level of crash protection, the agency is proposing to further stipulate that at least one high-weight harness CRS be identified in the forward-facing category. These high-weight harness CRS are child safety seats that allow use of internal harness systems on children weighing more than 40 pounds. If a vehicle manufacturer has fulfilled the basic program participation conditions, they then have the option of also recommending "All-in-one," "three-in-one," and built-in child restraints. Recommendations made for these CRS types, however, are optional. They would have to be in addition to those made for child restraints outlined previously as conditions for participation. Figure 1 depicts the acceptable types of CRS that can be recommended within each of the three main categories.

assess front right passenger seat fit if a usable rear seat exists.

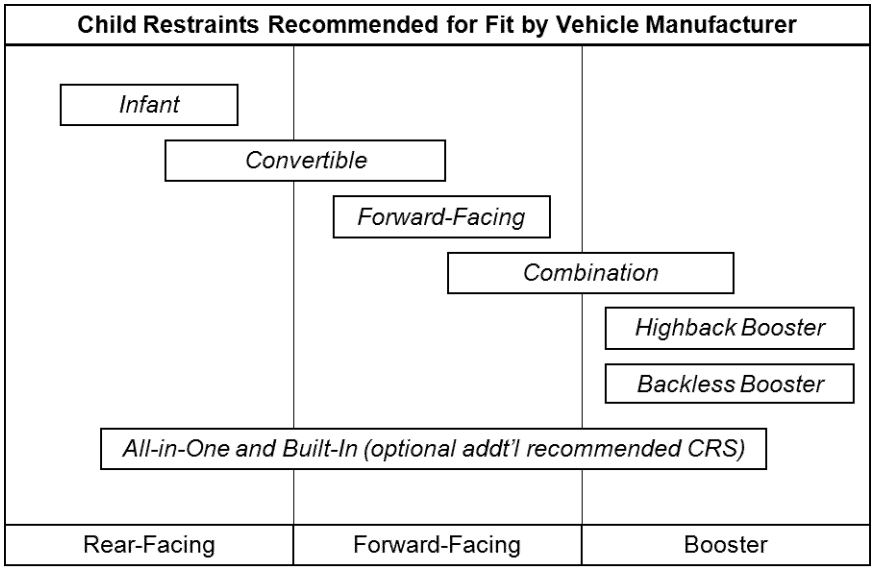

Figure 1: Acceptable Types of CRS for Each Category

The agency's last proposed condition for participation in this program regards price points. Within each of the three categories (rear-facing, forward-facing, and booster), vehicle manufacturers must identify products that meet established price categories based on the child restraint's Manufacturer's Suggested Retail Price (MSRP). The proposed price points for each category, which were established based on a survey of model year 2009 CRS, are shown in Table 1. These price points were established so that CRS selection is not limited to the most expensive child restraints available, and again to ensure a variety of CRS makes and models. A child restraint does not need to be expensive to provide adequate crash protection. Likewise, the agency wants to encourage through this program that a child restraint does not need to be expensive in order to fit properly in one's vehicle. If a vehicle manufacturer would like to fulfill only the minimum conditions for participation for three child restraint recommendations in a particular category, they must include at least one restraint that falls in the "inexpensive" range and at most one restraint in the "expensive" range. If more than three child restraints are recommended for any one category, the additional child restraints may fall within any price point the vehicle manufacturer chooses. The agency is proposing to provide vehicle manufacturers with this price-point information with the *Buying a Safer Car* information request and plans to re-evaluate the price points as needed. Comments are requested on this approach.

TABLE 1—PRICE POINTS FOR CRS CATEGORIES

	Rear-facing	Forward-facing	Booster
Inexpensive	< $100	< $130	< $80
Moderately Expensive	$100–$200	$130–$230	$80–$100
Expensive	> $200	> $230	> $100

B. Program Administration

The agency proposes that the easiest way to collect child restraint and vehicle fit suggestions is through NCAP's annual *Buying a Safer Car* information request since vehicle manufacturers are already familiar with its submission process. Though participation in this program would be voluntary, the agency would also need to ensure that any fit information it receives from manufacturers is correct. As in the pilot study, the agency could rent or lease vehicles to spot-check child restraints identified by vehicle manufacturers as fitting specified vehicles. Using the final versions of the evaluation forms proposed in this document, the agency would spot-check the vehicle-CRS fits identified by the vehicle manufacturers.[22]

C. Program Distribution

The agency is proposing that the vehicle-CRS fit combinations identified by vehicle manufacturers be published via the Safercar.gov Web site, the agency's main consumer information portal. Adding this information to Safercar.gov can provide consumers with the best available vehicle-CRS fit information and provide market incentives among manufacturers. In the past, this has helped to ensure the success of voluntary programs such as the agency's side air bag out-of-position testing initiative through NCAP.[23] Nearly every vehicle manufacturer

[22] Similar to how NHTSA conducts its EOU program, the agency is proposing that two two-person agency teams would spot-check fit recommendations in the same vehicle. If both teams did not reach similar conclusions about whether a CRS meets the fit requirements for a particular vehicle, another NHTSA representative would make the final determination.

[23] Each year, vehicle manufacturers provide evidence to the agency that they have conducted (and passed) a series of tests designed to assess the aggressivity of side air bags with respect to out-of-position occupants. Participating vehicle manufacturers are given credit on Safercar.gov in exchange for providing this data.

voluntarily participated in this program within two years. The agency has also taken a similar approach in MY 2011 for promoting vehicles with advanced crash avoidance technologies.[24] Though this program does not assess the occupant protection afforded by a particular vehicle-CRS combination in a crash, the agency believes that giving consumers information on whether a child restraint may be installed properly in a vehicle does provide indirect safety benefits. By providing consumers with information about child restraints that have been successfully installed in particular vehicles, the agency seeks to improve consumers' confidence in and comfort with selecting and using CRSs, and to reduce installation mistakes in the field.

For the Vehicle-CRS Fit program, the agency is proposing to display all suggested child restraints along with information pertaining to vehicle star ratings and safety features. As is the case in the Ease of Use program, NHTSA plans to minimize consumer confusion by emphasizing to consumers that the child restraint suggestions are not recommendations based on the CRS or vehicle's safety performance. Furthermore, to reduce manufacturer concerns that displaying particular child restraint suggestions on Safercar.gov will imply that assessments are an indicator of occupant safety in the event of a vehicle crash, the agency proposes to add a disclaimer to the Vehicle-CRS Fit assessment section of the Web site which will state, "*NOTE: The restraints above have been determined to fit successfully in this vehicle via the method(s) listed. This is an assessment of installation ONLY and should NOT be considered a safety claim for the vehicle or the child restraint. ALL child restraints and vehicles sold in the United States must pass rigorous Federal standards. Child restraints provide high levels of safety when selected to be age- and size-appropriate for the child and properly installed.*"

In addition, it will be further explained that the child restraints listed may not be the only products that can achieve a successful installation in that vehicle. To address concerns that parents and caregivers may believe that child restraints listed on Safercar.gov are the only CRS that are acceptable for their child and that will fit in their vehicle, the agency proposes to also include the following note: "*This list of child restraints is not all-inclusive. Vehicle manufacturers voluntarily provide this information for parents and caregivers as a starting point to help them select a child restraint that fits their child and fits their vehicle. You may find other child restraints that fit equally as well as those presented above. Also, you may contact a Child Passenger Safety Technician (CPST) in your area to check that your child seat both fits and is installed properly in your vehicle by clicking here: http://www.nhtsa.gov/cps/cpsfitting/index.cfm.*"

If, during spot-checking activities, a child restraint is found to not meet the fit assessment criteria, NHTSA is proposing to remove that information from Safercar.gov Web site. This is consistent with removing the "M" from vehicles determined not to meet the side air bag out-of-position testing requirements. The same strategy was employed when spot-checking the performance of certain crash avoidance technologies for MY 2011 vehicles and beyond. If the deletion of that child restraint means the vehicle no longer meets the participation conditions for that category, the agency proposes to give the vehicle manufacturer the opportunity to indicate another child restraint, which will be checked for fit by the agency. If no alternatives can be found, and the vehicle no longer meets the program's participation conditions, it is proposed that all child restraint suggestions for that vehicle will be deleted from Safercar.gov. Alternatively, the agency proposes to allow the vehicle manufacturer to contest the result from the spot-check test by demonstrating that the restraint in question fulfills the fit assessment criteria. Such a challenge will be reviewed by agency staff and a decision will be made as to whether the restraint meets the assessment criteria for "fit" and hence, the listing of the child restraint.

For each vehicle model, the agency envisions a detailed page on Safercar.gov that shows consumers the child restraints that have been indicated as appropriate for all vehicle seating position in the three categories—rear-facing, forward-facing, and booster. We also propose to indicate LATCH availability in the vehicle and whether the manufacturer has indicated each child restraint fits properly using vehicle seat belts, LATCH, or both. Having a dedicated Web page will also give the agency the opportunity to reinforce important principles and programs such as *4 Steps for Kids* and the CRS Ease of Use program. Consumers will be shown the height and weight ranges for the child restraints of interest. The agency also intends to link consumers to other areas of child passenger safety on NHTSA's Web site as well as offer installation tips and best practice guidance.

The agency intends to use this Web site to disseminate any installation notes that the vehicle manufacturer may need to communicate. Such additional information can include, but would not be limited to: Front seat positioning along the seat track, sharing of outboard lower anchorages to "create" a center LATCH position, instances in which using lower anchors or seat belts in certain seating locations eliminates the use of other positions, *etc.*

IX. Pilot Study To Assess Effectiveness of Preliminary Vehicle-CRS Fit Program Evaluation Criteria

A. Development of Vehicle-CRS Fit Evaluation Forms

In deciding to model its Vehicle-CRS Fit program after the draft ISO CRS–Vehicle usability program, the agency wanted, most importantly, to draw on the concept of developing a set of standard criteria to achieve the most repeatable assessments possible. The agency believed that developing standard evaluation forms would be the most beneficial approach for both vehicle manufacturers and consumers. The consumer information program would be enhanced if vehicle manufacturers, CRS manufacturers, consumers, and NHTSA have a common understanding of what the program considers a "proper fit." Vehicle manufacturers would be able to directly use these forms in their internal assessments and would have more certainty in knowing that NHTSA will agree with their assessments of fit. Without a set of evaluation criteria, it could be possible for some vehicle manufacturers to submit data to the agency that does not meet NHTSA's expectations for a proper installation. In addition, if varying criteria were used, the agency might not be able to assist consumers in understanding what a manufacturer's fit recommendations constitute.

As mentioned previously, to ensure a robust assessment, the agency reasoned that only objective criteria should be considered for the Vehicle-CRS Fit program. Accordingly, the agency's program will not assess how easily a child restraint can be installed in a vehicle, but will simply assess whether it can be installed successfully (*i.e.,* whether the child restraint can fit in the vehicle). Although this is somewhat contrary to the draft ISO CRS-vehicle usability program, NHTSA believes there is subjectivity in the draft ISO criteria concerning the assessment of the ease of fit (such as those that require the

[24] **Federal Register** Volume 72, No 175, 51908–51973. September 11, 2009.

evaluator to assess the ease of performing a task).

The agency has tentatively determined that the best way to objectively evaluate CRS fit in vehicles is to develop criteria based on factors known to influence installation, as outlined in the National Child Passenger Safety Certification Training Program student manual.[25] The agency considered both general installation techniques (*i.e.,* those that are required for all child restraint installations), as well as specific techniques that may be necessary for installation of certain types of child restraints or particular modes of use, such as ensuring that infant and rear-facing convertible restraints can be installed to the proper recline angle, ensuring that seat belts are of adequate length to install CRS with multiple belt paths (both long and short), and that the carry handle on infant restraints can be positioned according to manufacturer instructions. The agency was careful to incorporate vehicle features that influence proper CRS fit, such as top tether anchorages, lower anchorages, vehicle seat belts, and vehicle head restraints. In addition, we added criteria surrounding CRS installation tightness, and maximum weight limits of LATCH anchorages, as each of these factors can also dictate vehicle-CRS compatibility. It should be noted that many of the factors that were determined to be influential to achieving proper CRS installation based on the CPST student manual, including attachment to lower anchors, ability to tighten lower attachments once they are connected to lower anchors, maximum side-to-side and front-to-back movement of the CRS once it is installed, operation of the CRS harness once the CRS is installed, and tightening of the top tether once it is attached to the tether anchor, also mimicked criteria included in the draft ISOFIX usability standard.

Comments are requested on our use of the National Child Passenger Safety Certification Training Program student manual and the manual's determinations as to whether a CRS fits a vehicle. The benefits of using the manual are that the criteria contained therein have been used in the child passenger safety community for years as determinants of CRS fit. Accordingly, the manual serves as the primary guide to proper CRS installation and is a prominent child passenger safety resource. The installation criteria included in the manual are based on common sense, simplicity, and a "best practices" perspective. Furthermore, the agency's pilot study confirmed that applying the criteria outlined in the CPST manual resulted in secure CRS installation. However, because the agency is unaware of any test or accident data supporting some of the criteria specified for proper installation, the agency does not know if certain criteria should be used verbatim from the manual. An example of this is the criterion that no more than 20 percent of a child restraint's base may hang over the edge of the vehicle seat. Comments are requested as to why 20 percent should be used as the limit. Could the delineation be set at 25 percent, or 60 percent? NHTSA requests comments on the merits of using each of the criteria discussed in this document, and requests that commenters supporting the use or non-use of a criterion submit data supporting their position.

Probably the most important aspect of child restraint installation that the agency considered when developing the criteria, was to ensure that a given CRS can be installed in a particular vehicle according to the instructions of both the child restraint and vehicle manufacturers. The agency acknowledges that in the field, child restraints may be equipped with installation features that are not required by FMVSS No. 213. Some examples of these features are tethers that some CRS manufacturers recommend using on some convertible CRS when the CRS is installed rear-facing, and some manufacturer recommendations to use LATCH attachments on a booster seat, to keep a booster seat in place. Though top tethers on rear-facing CRSs and LATCH attachments on booster seats are not required by Standard No. 213, the agency believes that, if recommended by the child restraint manufacturer for use in attaching the CRS to the vehicle, such features must be able to be used in the particular vehicle being assessed. Accordingly, the agency believes that it was also important to add criteria to ensure that a CRS could be installed to meet the installation requirements stipulated in both the vehicle owner's manual and the CRS user's manual.

Preliminary evaluation criteria were developed based on the aforementioned considerations and were organized into a draft evaluation form, which served as the basis for the pilot study conducted by the agency. This draft form is included in Appendix B for reference.

B. Pilot Study Approach

To ensure that the preliminary evaluation criteria were robust enough to assess CRS fit in vehicles, the agency conducted a hands-on pilot study in which ten CPSTs installed various child restraints into different makes and models of newer vehicles. During each installation, the draft evaluation forms were used to gauge whether the subject child restraint could be properly installed in each vehicle. The pilot study sought to determine whether the criteria were complete enough to reasonably assess various and important aspects of proper CRS installation and whether they could sufficiently highlight instances of incompatibility between CRS and vehicles.

1. Vehicle Selection

When choosing pilot study vehicles, the agency attempted to select various types of vehicles, including two- and four-door passenger cars, station wagons, and sport utility vehicles (SUVs). Vehicles from different manufacturers were selected so a wide range of designs and characteristics that could influence child restraint fit was included in the study.[26] In addition, vehicles were chosen that had challenging seat contours, head restraint designs, and top tether and lower anchor locations. Most of the pilot study vehicles were rented from local car rental companies. Selection was therefore limited to vehicles that were available at the time of the study.

Table 2 shows a summary of the vehicles that were selected for the study.

[25] The National Child Passenger Safety Certification Training Program is a curriculum designed to teach participants about the importance of child safety and how to properly install child restraints. Certified technicians, CPSTs, are equipped with the knowledge to explain installation procedures to parents and caregivers so that they may safely transport their families, and to empower them with the knowledge to confidently install and reinstall child restraints as needed. The training program, which is based on the concept of learning (the facts, skills, and information), practicing (the new skills and information), and explaining/teaching (what was learned to parents and caregivers), was developed by NHTSA in the mid-1990s and has been updated by the agency as needed. The National Child Passenger Safety Board oversees the quality and integrity of the training and certification requirements, while Safe Kids Worldwide administers certification. CPSTs receive hands-on experience through a variety of activities, including child safety seat checks, and their exposure to common installation problems, incompatibility issues, general knowledge of child restraints and features, make them a valuable resource for parents and caregivers seeking child restraint installation assistance.

[26] The 2003.5 Mazda Protégé was included in this study because it was readily available for assessment and its vehicle seat characteristics were considered representative of those observed in the modern fleet.

TABLE 2—PILOT STUDY VEHICLES

Body style	Vehicle make model	Model year
2dr Passenger Car	Mitsubishi Eclipse	2009
2dr Passenger Car	Pontiac G5	2009
4dr Passenger Car	Chevrolet Impala	2009
4dr Passenger Car	Chrysler Sebring	2008
4dr Passenger Car	Dodge Charger	2009
4dr Passenger Car	Ford Focus	2009
4dr Passenger Car	Hyundai Elantra	2009
4dr Passenger Car	Mazda Protege	2003.5
4dr Passenger Car	Toyota Yaris	2008
Station Wagon	Subaru Forester	2006
Sport Utility Vehicle	Nissan Murano	2009
Sport Utility Vehicle	Toyota RAV4	2007

2. CRS Selection

Similar to the methodology used to select pilot study vehicles, the agency sought child restraints from different manufacturers that covered a wide range of features and footprints in an effort to continue exploring incompatibility issues. The agency also selected CRS that spanned a large price range and ensured that the pilot study covered at least two of each of the six types of child restraints—infant, convertible, combination, high-back booster, backless booster, and all-in-one seats. To conserve funds, CRS selection was limited to a selection of models used for the 2009 CRS Ease of Use program. The thirteen chosen CRS are listed in Table 3.

TABLE 3—PILOT STUDY CHILD RESTRAINTS

CRS type	CRS model	MSRP
Infant	Combi Shuttle EX	$170
Infant	Graco Snugride 32	140
Infant	Safety 1st Designer 22	80
Convertible	Graco ComfortSport	80
Convertible	Britax Boulevard CS	310
Convertible	Sunshine Kids Radian XT	250
Combination	Safety 1st Summit	100
Combination	Britax Frontier	280
High-Back Booster	Learning Curve B505	100
Backless Booster	Magna Clek Olli	100
Backless Booster	Evenflo Amp	25
All-in-One	Safety 1st All in One	140
All-in-One	Evenflo Symphony	200

C. General Pilot Study Observations

The pilot study exposed vehicle-CRS incompatibility issues stemming from vehicle seat belts, lower anchorages, top tether anchorages, vehicle interior space, and vehicle seat geometry, each of which will be described in the sections to follow. The specific results of the pilot study are included as Appendix C of this document.

Based on the pilot study evaluation form criteria, not every child restraint in the pilot study was determined to fit properly in every pilot study vehicle. More incompatibilities were observed during seat belt installations than during those with LATCH. When seat or seat back contour incompatibilities were observed, it often led to neither method of installation meeting the pilot study criteria for fit. There were no child restraints that were unable to fit in any pilot study vehicle according to the pilot study evaluation forms. Likewise, there was no vehicle in which none of the pilot study child restraints were determined to fit. However, it is clear from the chart in Appendix C that some vehicles had more incompatibilities with pilot study CRS than others. Likewise, some pilot study child restraints had more incompatibilities with the pilot study vehicles than others.

In general, the evaluation criteria used for the pilot study permitted robust and repeatable assessments.[27] However, it was determined that the evaluation form should be modified so that the act of filling out the assessment forms would be more logical and efficient. Consequently, the single evaluation form was expanded to three separate evaluation forms, one each for rear-facing, forward-facing, and booster modes. This three-form approach mirrors the format of the agency's existing CRS Ease of Use program, follows the logic of *4 Steps for Kids,* and permits distinction between installation methods. Furthermore, criteria were also removed or clarified based on the pilot study observations.[28] The revised forms have been included in Appendix D. The criteria that serve as the basis for these evaluation forms will be discussed below, as well as the agency's explanations of how these forms were derived and should be used.

X. Pilot Study Observations and Resulting Proposed Fit Criteria

The following section details incompatibility observations made by CPSTs during the Vehicle-CRS Fit pilot study. Photographs of these observations can be found in the document titled, *Vehicle-CRS Fit Pilot Study Observations,* included in this

[27] For all child restraints and installation modes assessed during the pilot study, two CPSTs conducted independent assessments and arrived at a mutual agreement as to whether a CRS could be properly installed in a particular vehicle.

[28] It was determined that removed criteria were already reflected in other criteria.

docket. This section also references additional widely-known vehicle-CRS incompatibilities that may not have been observed directly in this study, but were known to the CPSTs through their previous or anecdotal experience. Through the collective expertise of the agency and the CPSTs participating in the pilot study, the set of modified evaluation forms, included in Appendix D, was developed and is thus being proposed for use by the agency in assessing the fit of CRS in vehicles.

In each section, observations from the pilot study will be discussed and followed by the criteria the agency is recommending be used to assess vehicle-CRS fit. If needed, additional clarifications about a criterion's intention are presented after the criteria themselves.

A. Vehicle Seat Belts

Prior to the introduction of LATCH, vehicle seat belts were the sole method of securing child restraints in vehicles. Seat belts are used to secure a child restraint to a vehicle by routing them through a structurally-reinforced belt path in the restraint. When the child restraint is attached tightly to the vehicle, and the child is then secured tightly to the CRS, the child and its restraint are effectively coupled to the vehicle, which ensures proper ride-down as the vehicle comes to a stop during a crash.[29]

Seat belts have traditionally been a contributing factor to vehicle-CRS incompatibilities, especially when locking clips are required for proper installation.[30] The agency has issued a number of regulations to address the difficulty of using a locking clip. Beginning in 1996, the lap belt portion of all vehicle seat belts other than the driver's have been required to be "lockable" in order to help eliminate the need to use locking clips.[31] The majority of vehicle manufacturers choose to employ either a locking latch plate or a "switchable" retractor in order to meet this requirement. Either of these solutions is an improvement over the need to use additional devices such as a locking clip to secure the seat belt. However, the agency found in a study on CRS misuse that loose vehicle seat belt-CRS attachment was the first or second-most prevalent type of critical misuse in the field depending on the type of restraint.[32] Though the study did not cite the exact reasons for loose seat belt installations, it is possible that a portion of those may have been due to a failure to lock the seat belt properly. Not all parents or caregivers are aware that seat belts must be completely pulled out to engage switchable retractors, nor are they aware of techniques that can help ensure locking latch plates remain locked. For these reasons, seat belts are often still misused when installing child restraints.

In December of 2004, the agency published a final rule requiring Type II seat belts in center rear seating positions.[33] [34] Previously, lap/shoulder belts were only required in outboard seating positions; as a result, some vehicle manufacturers had continually installed only Type I lap belts in the center rear seats of vehicles.[35] Installing lap/shoulder belts in the center rear seating position allows all rear positions to be acceptable for booster seat use, rather than only the outboard positions. This is particularly important considering booster seat use has increased.[36] Accordingly, booster misuse rates should decline over time as the fleet of older vehicles with lap belts diminishes.

Even with the introduction of LATCH, vehicle seat belts remain vital to the installation of child restraints in many vehicles. An agency LATCH study found that 25 percent of parents and caregivers familiar with using both lower attachments and anchors, as well as seat belts to secure child restraints, actually preferred seat belt installations over LATCH installations.[37] In addition, there are a number of reasons why a seat belt installation may be the only choice for installing a child restraint. For one, most vehicles do not have lower anchors at the center rear seating position; parents who want to install their child restraint in that position must therefore use a seat belt. Another major reason is that CRS market trends towards higher-weight harnessed seats suggest that in the coming years there will be an increased move to install child restraints using vehicle seat belts after children exceed the manufacturer weight limits of the lower anchors.[38] For these reasons, the agency believes the program should consider assessment criteria that relate to vehicle seat belts.

The CPST curriculum teaches that a child restraint is securely installed only if it does not move more than one inch side-to-side or front-to-back when pulled at the belt path. The pilot study revealed numerous instances in which the subject CRS could not meet this requirement when installed using the vehicle seat belts. To better restrain older children, teenagers, and adults, seat belt buckle stalks may be very long or may be anchored forward with respect to the seat bight. Unfortunately, these two seat belt characteristics can have an adverse effect on one's ability to achieve a sufficiently tight child restraint installation (*i.e.,* enable not more than one inch side-to-side movement), especially if the belt path on that child restraint is very long. In some instances, the buckle rests at the entrance to the belt path; this is expressly prohibited in some child restraint manuals as it may adversely affect the stability of the restraint. When positioned in a similar manner, a latch plate equipped with its own locking mechanism may not lock properly due to the angle at which it is resting.

The agency acknowledges that the CPST curriculum permits caregivers to twist buckle stalks in order to achieve a tight installation or to prevent buckles from resting against the entrance to the belt path, as long as the CRS and vehicle manufacturers both allow the practice. The agency has received data from Indiana Mills & Manufacturing, Inc. (IMMI) that indicates no considerable reduction in the strength of the seat belt webbing is observed if a flexible seat belt buckle is twisted three times; therefore, twisting the seat belt buckle

[29] During a crash, the vehicle's front end is designed to crush and absorb the crash energy, which effectively extends the distance, and accordingly time, over which the occupant compartment comes to rest. Tightly coupling the occupants to the vehicle will permit them to realize the full effects of riding down the crash with the vehicle and will reduce the forces acting on the body. Therefore, it is imperative that for applicable child restraints, not only is the child securely restrained by the internal harness, but also that the child restraint is tightly attached to the vehicle to ensure adequate ride-down. This will effectively serve to lessen the likelihood that the child's movement will be stopped abruptly because of contact with a hard vehicle surface.

[30] A locking clip is a device, normally provided by the child restraint manufacturer, which keeps the lap portion of a lap/shoulder belt tight by securing it near the latch plate. The locking clip prevents the seat belt (and thus the child restraint) from moving freely.

[31] § 571.208, S7.1.1.5.

[32] Decina L.E. and Lococo K. H., *Misuse of Child Restraints.* NHTSA Publication No. DOT HS 809 671, National Highway Traffic Safety Administration, 2004, Pages 33–34.

[33] 69 FR 70904, December 8, 2004.

[34] A Type II seat belt is defined by FMVSS No. 209, "Seat belt assemblies," to be a combination of pelvic and upper torso restraints, which is commonly referred to as a lap/shoulder or three-point belt.

[35] A Type I seat belt is defined by FMVSS No. 209 to be a lap belt for pelvic restraint.

[36] *Booster Seat Use in 2008.* May 2009. NHTSA Publication No. DOT HS 811 121.

[37] Decina, L.E., Lococo, K.H., Doyle, C.T., *Child Restraint Use Survey: LATCH Use and Misuse,* NHTSA Publication No. DOT HS 810 679, National Highway Traffic Safety Administration, December 2006, Page 3.

[38] High-weight harness child restraints permit children weighing more than 40 lbs. to be restrained by the internal harness of the CRS until they reach a higher maximum weight limit stipulated by the CRS manufacturer.

three or less times is considered acceptable practice and is often necessary to achieve a tight fit.[39] The agency believes, however, that this practice is not well-known to the average parent or caregiver. In addition, many buckle stalks in the vehicle fleet cannot be twisted due to rigid plastic coverings. Some child restraints have higher belt paths than others, which can eliminate the need for twisting the seat belt. Therefore, for the purposes of the pilot study, twisting buckle stalks was not permitted to achieve proper fit in a seating location. NHTSA has tentatively decided it will not twist buckle stalks in assessing the fit of CRSs in vehicles.

In some vehicles, the agency observed instances in which seat belt latch plate buttons interfered with belt-locking hardware outfitted on some infant restraints. The latch plate button is installed by the vehicle manufacturer to keep the latch plate in an accessible location for occupants to use. In a few instances throughout the pilot study, this interference was such that the seat belt could not be sufficiently tightened. In other cases, the seat belt button inhibited the proper use of the rear-facing child restraints' built-in seat belt lock-offs. Although it was not observed during the pilot study, given the wide range of child restraints and vehicles available in the marketplace, it is feasible that such buttons could interfere with lock-off hardware on forward-facing restraints and belt-positioning hardware on booster seats, as the pilot study revealed several occasions where the seat belt buttons in certain vehicles nearly caused such interference with installation for the selected CRS.

Some child restraints are designed with multiple belt paths for caregivers to route the seat belt through. Sometimes a certain belt path must be used when the child is of a particular size or weight. Due to various vehicle characteristics, there are cases in which only one belt path can be used. For example, CPSTs in the pilot study observed that some vehicle seat belts are not long enough to properly install some child restraints using all of the available belt paths. Other times, one path may result in a more stable installation than the other. Although these instances were rare, and this issue is not suspected to be a widespread problem, it is a possibility in the field and, NHTSA tentatively believes, is worth noting.

Though it is not a common practice in the U.S., some child restraint manufacturers give caregivers the option of routing the shoulder belt portion of the seat belt around an infant seat carrier rather than feeding it through the belt path. It is likely that some vehicle seat belts will not be long enough to be used with child restraints in this manner. NHTSA has tentatively decided to assess the belt's ability to be routed around the CRS if the CRS manual recommends or allows such a belt routing option. If the belt is not long enough to be used in this manner, NHTSA will deem the CRS as not fitting that seating location or vehicle.

During the pilot study, evaluators noted that certain seat belt anchors were too narrowly spaced to accommodate some booster seats. This creates a situation where the seat belt buckle may actually sit behind or underneath the child and the restraint. Buckling the child can be difficult, if not impossible, and may not allow for proper routing of the lap belt portion of the seat belt across the child's upper legs. Narrow anchorage points for seat belts may also limit the ability to properly use them to install any type of child restraint, not just boosters, although this was not specifically observed in the pilot study. There may be other times, for example, when a child restraint (particularly at its belt path) is too wide and actually rests on top of the seat belt buckle. In such cases, proper routing and tightening of the seat belt are unlikely and the child restraint would therefore be deemed incompatible with that particular seating location or vehicle.

In one pilot study vehicle, the seat belt was found to be incompatible with the belt positioning hardware on a high-back booster. In this case, the seat belt, when pulled from its retractor, could not move freely though the belt guide hardware because of incompatible geometry between the two.[40] This condition can create unwanted slack in the shoulder belt portion of the seat belt, and present a dangerous situation since a loose seat belt may not restrain a child's upper body properly in the event of a crash. However, the pilot study participants found it somewhat difficult to quantify this condition with objective criteria. Depending on the weight of the child using the booster, the height to which the booster's head restraint is raised, and the force with which the seat belt is pulled from its retractor, different conclusions may be made as to the potential for unwanted shoulder belt slack. Our experience with the pilot study found that the majority of seat belt slack is generally preventable if the installer exercises due care; however, there can also be vehicle seat belt-booster seat combinations that are overly prone to the creation of slack and should thus be avoided. In light of this, the agency is seeking comment on the frequency and severity of this issue in the field, as well as any information about how we may develop an objective method for determining whether slack exists between a particular booster seat shoulder belt guide and the vehicle seat belt. The agency proposes to include an evaluation criterion for whether seat belt slack is created between a booster and vehicle seat belt on the final Vehicle-CRS Fit forms.

Based on the above observations from the pilot study, NHTSA proposes to add the following criteria to its Vehicle-CRS Fit assessment forms in order to identify compatibility issues specific to child restraints and vehicle seat belts:

—Does the distance between the Type II seat belt's lap belt anchor and buckle allow the child restraint to be installed properly (rear-facing and forward-facing CRS) or the booster to be positioned properly?

—Is the seat belt length sufficient to properly install the CRS using all possible belt paths permitted by the CRS manufacturer and in all rear-facing (rear-facing CRS) modes of use or forward-facing (forward-facing CRS) modes of use?

—Does the seat belt buckle interfere with proper CRS installation (rear-facing and forward-facing CRS)?

—Does the seat belt latch plate button limit the use of any lock-off or other hardware on the CRS or otherwise prohibit proper installation (rear-facing and forward-facing CRS)?

NHTSA has tentatively determined that all criteria must be met to establish that a child restraint meets the fit assessment conditions for a given vehicle. Assessments should be made for forward-facing CRS and rear-facing CRS, and also for booster seats, if applicable. NHTSA is also proposing that if proper installation of the child restraint cannot be achieved with the seat belt designated for each applicable seating location within the vehicle, it should be determined that the child restraint does not meet the fit assessment conditions for seat belt installation for the subject vehicle.[41]

[39] This information was received in a letter from Jerry Thompson, an Engineering Manager at IMMI Child Division, dated September 28, 1998.

[40] This mounting location is sometimes referred to as the "D-ring" location.

[41] For those vehicles having two or more rows of seats, assessments will be made only for rear seating positions. Assessments will be made for the right front passenger seat and also for the front middle seat, if available, for vehicles having only one row of seats.

The agency tentatively believes that it is important that parents have the option to move a child restraint to a different seating position within the vehicle if necessary in order to accommodate adult passengers or additional children. Comments are requested on this issue.

B. Top Tether Anchorages

A child restraint's top tether attachment strap is an important feature because it can reduce head excursion for children positioned in forward-facing CRS in frontal crashes, thus reducing the likelihood that a child will experience head contact with the vehicle interior.[42] It can not only provide stability by reducing the amount of forward and side movement during travel, but can also help achieve a tight installation. Although not required by NHTSA's standards, some manufacturers provide top tethers for their rear-facing child restraints. Accordingly, NHTSA identified the attachment and proper tightening of a CRS top tether as important assessments of child restraint fit in a vehicle. To the extent that a parent or caregiver is unable to attach a child restraint's top tether to the tether anchor in the vehicle or improperly installs the top tether because of vehicle-CRS incompatibility, and the CRS manufacturer or vehicle manufacturer recommends use of the tether with the particular CRS in that rear- or forward-facing orientation, NHTSA tentatively believes the child restraint should not be identified as one that meets the fit assessment conditions for that vehicle.

The agency's pilot study revealed that the location of the top tether anchor in relation to the head restraint and vehicle seat belt can be a prominent factor in determining vehicle-CRS compatibility. When some child restraints were properly positioned forward-facing on the vehicle seats in two passenger cars, the distance between the top of the CRS and tether anchor, which was located on the vehicle's rear shelf, was insufficient to permit the tether to be tightened. In these cases, the vehicles were not designed with regards to the minimum tether distance required for the installation of the subject CRS.[43] Had the tether anchor been located more rearward on the vehicle shelf, or had the rear head restraint been higher, or in some cases adjustable, it is possible that the top tether attachment strap from the subject child restraints could have been adequately tightened. This was not a problem for other child restraints installed in the forward-facing mode in these same vehicles because the backs of the other child restraints did not extend as high as those from the child restraints previously mentioned. The shorter height of these CRS permitted a greater distance between the top of the child restraint and the tether anchor, and consequently permitted proper tether adjustment and tightening.

Additionally, the agency is also aware of instances in which a vehicle's tether anchor is located too far away from the respective seating location to permit attachment of a top tether. This is most commonly observed in SUVs and hatchbacks.

Vehicle seat and head restraint designs can also pose top tether use problems. Non-adjustable head restraints that are smaller in size or that are extremely rounded on top may permit the top tether strap(s) to slip off of the head restraint during travel. Additionally, geometry differences between the CRS and the vehicle seat can sometimes permit the reinforced portion of the top tether webbing to catch on the vehicle seat or head restraint upon tightening. Consequently, a loose tether may result without the parent or caregiver's knowledge.

To identify compatibility issues specific to child restraints and vehicle tether anchors, NHTSA has decided to propose the following criteria on its Vehicle-CRS Fit assessment forms:

—Can the rear-facing tether be attached to the appropriate vehicle tether anchor (forward-facing CRS and boosters, if applicable) or location in the vehicle (rear-facing CRS, if applicable)?

—Can the top tether be properly tightened (forward-facing CRS and boosters, if applicable) or can the rear-facing tether be properly tightened (rear-facing CRS, if applicable)?

NHTSA is proposing that assessments should include whether or not the top tether on the child restraint can be attached to the vehicle's top tether anchorages and tightened. If the top tether cannot be attached, we would determine that the CRS does not meet the fit assessment conditions for the given vehicle. If the top tether can be attached, a further assessment of whether or not it can be tightened would then be made. If, upon tightening, the tether strap begins to slide off of the head restraint or catches on any part of the vehicle seat such that the tether seems taut, yet loosens or shifts position upon pulling the CRS from side-to-side at the belt path, the child restraint does not meet the aforementioned criteria. Assessments would be made for forward-facing CRS and also for rear-facing CRS and booster seats, if so equipped. For CRS equipped with a top tether and designed to be installed rear-facing, the agency is proposing to assess whether the tether can be properly attached to the vehicle when the CRS is installed in the rear-facing mode. Such assessments will be made only if the CRS user's manual instructs that tether attachment is either acceptable or required for the rear-facing mode and the vehicle owner's manual does not explicitly prohibit attachment of a rear-facing tether. The top tether assessment would also only be made for convertible child restraints placed in the rear-facing mode if the CRS user's manual explicitly states that tether attachment is either acceptable or required for the rear-facing mode.

C. Lower Anchorages

As mentioned previously, the intent of the LATCH system was to introduce a user-friendly system that would make CRS installation independent of the seat belts. When using the lower anchor portion of LATCH, there is no need to lock the vehicle's seat belt when installing the CRS, use a locking clip, twist long belt buckle stalks to achieve a tight fit, or combat seat belts that are anchored forward of the seat belt buckles. Therefore, it was expected that LATCH would be less prone to incorrect routing and loose fit, two sources of misuse often associated with seat belt installations, and accordingly, would reduce misuse and incorrect installation of child restraints. This was evidenced by the 2006 NHTSA CRS misuse study. This study found that the lower attachment strap was routed through the correct path for 93 percent of the CRS surveyed and a tight installation was achieved for 70 percent of the CRS.[44] [45] Accordingly, real world experience demonstrates that LATCH, and in particular, the lower attachments, provides safety benefits to many parents and caregivers who experience difficulty attaching a child restraint correctly in a vehicle or find that the vehicle's seat belts are incompatible with a child restraint. However, as mentioned previously, the agency also recognizes that LATCH, although

[42] *See http://www.cpsboard.org/pdf/techmanual/StudentManual_R0108_ch6.pdf.*

[43] Here, the minimum distance required is equal to the length of the tether hook plus the reinforced stitching length on the tether strap webbing.

[44] Decina, L.E., Lococo, K.H., Doyle, C.T., *Child Restraint Use Survey: LATCH Use and Misuse,* NHTSA Publication No. DOT HS 810 679, National Highway Traffic Safety Administration, December 2006.

[45] A CRS installed with lower anchorage attachments was considered securely installed if the lower attachment connectors were installed right side up, the lower attachment straps were flat and routed to the correct anchors, and the installation was tight.

effective, has not addressed all vehicle-CRS compatibility problems.

The agency's pilot study suggested that, like seat belt anchor points, the design of a vehicle's lower anchorages can also present compatibility issues. The overwhelming majority of child restraints in the U.S. employ flexible lower attachments. In these systems, the lower attachments must first be connected to the vehicle's lower anchorages. Then, the additional webbing must be tightened to eliminate system slack and achieve a tight fit. The majority of child restraints have at least one push-button or tilt-lock adjustment mechanism on their lower attachment straps that provides tension and then eventually allows for that tension to be released if the CRS needs to be removed from the vehicle.

In some vehicles assessed during the pilot study, incompatibilities were observed between the lower attachment strap adjusters and the CRS lower attachment path. In most cases, this occurred because the location of the vehicle's lower anchorages was high in relation to the resting surface of the CRS, thus minimizing the distance between the CRS lower attachment path and the vehicle's lower anchorages. In some cases, this was complicated by lower anchorages that protruded from the seat bight, which served to further decrease this distance. Similar to, as mentioned previously, when a seat belt buckle rests on the edge of the child restraint's belt path, it is undesirable for the lower attachment strap adjusters to contact the frame or edge of the CRS belt path. A proper fit could not be achieved in these cases.

High seat bights were also observed to have compatibility issues with LATCH-equipped backless booster seats as well. Though booster seats are not required to have components that attach to LATCH anchors, a number of products have entered the market in recent years that use components that attach to lower LATCH anchors to stabilize the booster on the vehicle seat. When installed using its rigid lower anchors, one backless booster seat was unable to sit flat on the vehicle seat pan because the vehicle's lower anchors were located in the seat back rather than in its bight. A similar observation was made when attempting to position the same booster seat without trying to attach the lower rigid attachments to the vehicle anchors in that same position within the vehicle. Because the vehicle did not have a gap at its seat bight and the booster manufacturer required that the rigid attachments be inserted into the seat bight if they were not being used, the booster was once again not able to be properly positioned on the vehicle seat.[46]

Other incompatibility issues were identified when attempting to install a LATCH-equipped backless booster seat using the rigid lower attachments. It was observed that if a vehicle's lower anchors were too far forward or exposed in relation to the seat bight, the LATCH-equipped backless booster seat may be positioned forward on the vehicle seat pan and away from the vehicle seat back. In such instances, a large gap was created between the booster and the seat back. This may result in children being unable to sit flat against the seat back and leaning forward. Such a position can lead to increased head excursion during a crash. In addition, this condition may also allow children to slouch, whereby the lap portion of the seat belt may sit over the occupant's soft abdominal region instead of over the pelvis. If the seat belt is resting on soft tissue instead of bone, internal organs are more at risk in the event of a crash. The pilot study also revealed that a similar phenomenon can occur when traditional backless booster seats that are void of lower attachments are positioned against raised or prominent seat bights that essentially push the booster away from the seat back.

To establish that a child restraint is compatible with a vehicle's lower anchors, the following criteria should be met:

—Can the lower attachments on the CRS (rear-facing and forward-facing CRS) or booster (if so equipped) be properly attached to the vehicle's lower anchorages?

—Can the lower attachments on the CRS (rear-facing and forward-facing CRS) or booster (if so equipped) be tightened, if necessary, after the initial connection to the lower anchorages?

—When the CRS is installed (rear-facing and forward-facing CRS) or the booster is positioned (booster, if so equipped) using lower anchorages, is there access to the vehicle's adjacent seat belt buckles?

For the Lower Anchorages category, NHTSA is proposing to assess whether the CRS can be attached to the vehicle's lower anchorages. It would be permissible to move a seat belt buckle out of the way to do so. If the lower attachment straps on the CRS can be successfully attached to the vehicle's lower anchorages, it would then be assessed whether the lower attachment straps on the CRS could be adequately tightened to provide a secure fit and permit limited movement.[47] Additionally, once the CRS is attached to the vehicle's lower anchors, it must be determined whether the vehicle's adjacent seat belt buckles can be accessed and used. However, if a vehicle manufacturer permits sharing of inboard lower anchorages from the outboard vehicle seating positions to create a center LATCH position, or if a manufacturer permits a center LATCH position that is offset from the center designated seating position, NHTSA reasons that it would be impractical to use the seat belt buckles from the adjacent seat positions when a child restraint is installed with LATCH in the created center position. Therefore, for such center LATCH positions, the agency is not proposing to assess whether there is access to the adjacent seat belts as long as the vehicle manufacturer specifies in the owner's manual that the seat belt buckles related to the adjacent seating locations cannot be used when the created center LATCH position is utilized. This aims to minimize the possibility that a consumer may improperly use or route the seat belt in adjacent seating locations that would be considered non-use positions, and would therefore be exempt from the aforementioned assessment. The agency is distinguishing between outboard and center LATCH positions because some consumers may want to install a child restraint in the center position, even if the vehicle does not offer a dedicated LATCH position at the center seat. Accordingly, the agency does not want to discourage vehicle manufacturers from including center LATCH positions, particularly in smaller vehicles where a dedicated center LATCH position may be impractical. If a vehicle manufacturer permits the sharing of inboard lower anchorages from outboard seating positions to create a center LATCH position in any one vehicle model, NHTSA will also confirm that the CRS user's manual does not prohibit installation of the given child restraint in such positions. For vehicles having a fold-down armrest in the center rear seating location, the agency will verify that the CRS manufacturer permits installation of the child restraint at such

[46] NHTSA tentatively believes that it should assess the attachment and proper tightening of the CRS lower LATCH attachments of a CRS when the CRS manufacturer or the vehicle manufacturer recommends or specifies use of the lower LATCH anchorages with that CRS. To illustrate, although FMVSS No. 213 does not require lower LATCH attachments on booster seats, if the booster seat has such attachments and the vehicle manufacturer identifies the booster seat as one that fits its vehicle, then NHTSA will assess the fit of the booster on the vehicle seat using the lower LATCH attachments.

[47] Specific tightness requirements for CRS installation are outlined in Section IX E. of this document.

locations. All assessments will be made for rear-facing and forward-facing child restraints and also for LATCH-equipped booster seats.

Although the pilot study did not reveal instances in which a CRS could not be installed using LATCH if the adjacent seat belt was in use, the possibility may exist. The agency recognizes that using the seat belt in a position adjacent to a CRS installed with LATCH may be necessary or desirable for parents and caregivers transporting other adults or older children in booster seats. Therefore, the agency is requesting comments on whether an additional requirement should be added to address access to a vehicle's lower anchorages when a CRS is installed using the seat belt in an adjacent seating position. If the addition of such a requirement is deemed necessary, the agency would make this assessment for LATCH seating positions adjacent to a seat belt-installed CRS as long as the vehicle owner's manual does not prohibit the use of LATCH in that position when the adjacent seat belt is in use. Similar to the previous criterion to assess seat belt access when LATCH is in use, the agency is proposing that this additional LATCH access criterion would be applicable to created center LATCH positions and overlapping center LATCH positions, if permissible, as well as designated LATCH positions. In other words, the agency is proposing to apply this LATCH access requirement to every LATCH position in the vehicle when a CRS is installed using the vehicle seat belts in the adjacent seating position(s).

This program will not assess how easily a child restraint's lower connectors can be either attached to or detached from a vehicle's lower anchors, nor will this program evaluate the likelihood that one will be able to misuse a vehicle's LATCH hardware. The agency recognizes that connector attachment may be difficult if the vehicle's lower anchors are recessed deep within the vehicle seat bight, if the vehicle seat cushion is stiff, or if clearance around the vehicle's lower anchors is inadequate; however, the agency tentatively concludes that evaluating the ease of attachment or detachment would lead to subjective, rather than objective, fit assessments. As the agency's intent is to provide a robust, repeatable evaluation of CRS fit in vehicles, the agency will not incorporate criteria that focus on ease of installation at this time. The agency hopes, however, that as child restraint and vehicle manufacturers work together to address compatibility, they will recognize and address such issues. Because the agency's misuse studies have shown that there is a greater likelihood that a child restraint will be securely installed with LATCH lower attachments than with a vehicle seat belt, the agency hopes that vehicle manufacturers will also make it easier for parents and caregivers to locate a vehicle's LATCH anchors within a vehicle so that they may be more intuitive to use.

D. Head Restraints

Prominent, fixed head restraints can present incompatibilities between vehicle seats and some child restraints, especially forward-facing restraints and high-back boosters. In some vehicles, a forward-facing CRS was only able to make contact with the vehicle at the seat bight and at the head restraint and evaluators were not able to achieve a tight installation. In other vehicles, the installation was secure but the child restraint manufacturer required a specific amount of contact between the seat back and the restraint. In such cases, the head restraint's geometry prevented the child restraint from contacting the back of the vehicle seat, which violated the child restraint manufacturer's instructions. This problem may have been eliminated for some high-back booster seats if the head restraint was removable or adjustable instead of fixed. As mentioned previously, pilot study evaluators also observed instances where top tethers could not be sufficiently tightened over fixed head restraints when there was not adequate distance for attachment of the tether hook. In all of these cases, the child restraint did not meet the proposed conditions for proper installation.

In light of these observations, NHTSA is proposing to include one head restraint-related criterion on its Vehicle-CRS Fit Assessment forms. In order to establish that a child restraint fits in a vehicle, the following should be met:

—Does the vehicle head restraint interfere with proper CRS installation (forward-facing CRS) or booster positioning (high-back booster only)?

To eliminate incompatibilities between head restraints and child restraints, all available methods of remedy indicated in the vehicle and/or CRS owner's manual may be employed. These can include, but are not limited to head restraint removal, moving the head restraint upward into a locked position, and tilting the head restraint rearward. If proper installation of the child restraint cannot be achieved using all listed remedy methods, it would be determined that the child restraint does not fit in the subject vehicle.

E. CRS Installation, Use, and Tightness

In the event of a crash, it is imperative that a child restraint be tightly coupled to the vehicle so that the child occupant is afforded the full benefits of riding down the crash with the vehicle. Vehicle design factors such as space limitations and seat characteristics can pose significant challenges for the installation of certain types of child restraints. Additionally, a variety of CRS characteristics, including assorted footprint shapes, belt path locations, belt positioning features, and overall sizes, can create challenges for vehicle seat cushions. While it is beneficial for parents and caregivers to identify vehicle-CRS combinations that have a wide variety of options available to meet their needs, this diversity may make it difficult for parents and caregivers to identify vehicle-CRS combinations that provide to a proper fit.

During the agency's pilot study, it was observed that some vehicles were simply too small to accommodate certain CRS types or certain CRS orientations. In two vehicles, the roofline of the vehicle limited the height to which the head restraints of certain combination and high-back booster seats could be raised in the outboard seating locations. This is especially important since the head restraints on most child restraints designed for forward-facing installation, including many boosters, now come with wider and more padded side wings in the head area. These are typically comprised of energy absorbing foam and are intended not only to confine the head, but also to attenuate lateral loads. If the parent or caregiver is unable to fully adjust the headrest, the feature of the booster or other forward-facing child restraint may not be able to be used, and the child's head may still be able to extend above the height at which the head restraint on the CRS or booster can adjust depending on the slope of the roofline.

Other vehicles did not offer adequate space to properly position rear-facing child restraints. In newer vehicles, certain rear-facing child restraints may interfere with a vehicle's advanced air bag sensors if the restraints are allowed to rest against the front seat back. In several vehicles studied, unless the vehicle's front seats were set forward of the fore-aft mid-track seat adjustment position, most convertible restraints contacted the front seat back when

positioned rear-facing.[48] For those cases, such contact was prohibited by the respective CRS manufacturers. The agency recognizes, however, that some CRS manufacturers permit their child restraints to rest against the back of the vehicle seat. The CPST curriculum also acknowledges that such contact is acceptable if it is not expressly prohibited in either the vehicle owner's manual or the CRS user's manual.[49] Accordingly, the agency is proposing to adopt criteria to assess whether a CRS can be installed rear-facing so as to achieve the appropriate distance relative to the front seat back, as prescribed by the CRS manufacturer in the CRS owner's manual. If the CRS owner's manual does not provide guidance as to whether CRS contact with the front seat back is permitted or not, the agency is proposing to permit such contact.

Proper installation could also not be achieved for several infant restraints positioned in the middle rear seating location in some vehicles because the carrier handle contacted the center console of the vehicle when placed in its manufacturer-prescribed travel position. If the handle is adjusted to the wrong position for travel, during a crash, it may contact the vehicle seat or other vehicle components during rebound and may break, injuring the child or other occupants.[50] Therefore, the agency is also proposing to adopt criteria to assess whether proper placement of the CRS carrier handle can be achieved for rear-facing CRS, if applicable.

The CPST curriculum also teaches that not only must a CRS not move more than one inch from side-to-side or front-to-back when pulled at the belt or lower attachment strap path with one hand to be properly installed, but further specifies that no more than 20 percent of the child restraint's footprint may hang over the edge of the vehicle seat.[51] We are considering using this criterion to assess the CRS stability on the vehicle seat pan since it has been included in the curriculum and is a familiar metric in the child passenger safety community. However, as stated earlier in this preamble, we request comment on the merits of the 20 percent criterion. Should a different value be used instead?

In light of the aforementioned installation issues, NHTSA is proposing that the following criteria are considered when assessing fit in the "CRS Installation, Use, and Tightness" category:

—Does more than 20% of the CRS (rear-facing and forward-facing CRS) or booster base/bottom hang over the edge of the vehicle seat pan?
—Can the CRS be installed so that there is no more than 1 inch of movement side-to-side or front-to-back when pulled at the LATCH path or belt path (rear-facing and forward-facing CRS)?
—Can the CRS be installed rear-facing so as to achieve the appropriate distance relative to the front seat back, as stated in the CRS owner's manual, if applicable? Must also be able to achieve proper placement of CRS carrier handle, if applicable (rear-facing CRS only).
—If the harness is intended to be accessed when the CRS is installed, can it be tightened (rear-facing and forward-facing CRS)?
—Does the positioning prohibit full adjustment of the booster's head restraint or the use of any belt positioning hardware (booster only)?

Although this program will not be evaluating vehicle-CRS combinations for ease of fit at this time, the agency is adopting certain criteria that should help ensure that the installation and use of recommended child restraints will be less difficult for parents and caregivers.

The vast majority of harnessed child restraints currently in the U.S. market use a "continuous" or "one-pull" mechanism to tighten the harness onto the child once s/he has been secured in the restraint. This style of harness tightening mechanism is for use while the CRS is installed in the vehicle, so that the parent or caregiver can appropriately adjust the harness to fit snugly on their child prior to each and every trip. The agency is proposing that in order to meet the fit recommendation conditions, child restraints with harness tightening systems that are intended to be accessed and used while the CRS is installed must actually be able to be accessed and used. If the harness tightening mechanism is not intended to be accessible according to the CRS owner's manual when the CRS is installed in the vehicle, this would not be a proposed requirement for vehicle fit.

The agency is also proposing a criterion that promotes CRS installations without the use of items that did not come from their manufacturers. For example, for proper installation, a rear-facing CRS must achieve a proper recline on the vehicle seat and must achieve proper tightness without the use of after-market objects such as pool noodles or rolled towels. Although it is common practice in the field to use such items, the items are used to solve incompatibility problems. Thus, the agency does not believe that a child seat fit recommendation within this program should depend upon the use of items to fix incompatibility between the CRS and the vehicle.

We believe, in most cases, requiring no more than 20 percent of the CRS bottom to overhang the vehicle seat pan and less than one inch of movement at the belt path when installed should result in a proper, tight installation. However, though not explicitly stated, it is often the case that a child restraint must rest securely on the vehicle seat pan and against the seat back to achieve no more than one inch of movement when installed. As indicated previously, vehicle features such as fixed head restraints may position larger forward-facing restraints or high-back boosters away from the vehicle's seat back, generating large gaps behind the CRS. High seat bights and severe vehicle seat pan contours can also create gaps behind or under a CRS. In addition, some child restraint manufacturer instructions stipulate that proper installation requires a certain amount of contact between the vehicle seat back and the rear of a child restraint when installed forward-facing. The agency is unsure as to the specific reasons for this requirement and is seeking comment on this issue.

It should be noted that the agency is proposing to permit the adjustment of vehicle seat backs, if possible, to achieve appropriate CRS contact with the vehicle seat back. This proposal is aligned with S7(a) of FMVSS No. 225, "Child restraint anchorage systems," which currently permits seat back adjustment in order to attach the SFAD 2 to a vehicle's lower anchorages during testing.[52] Further, adjusting the seat back so that the child restraint would rest securely against the seat back is a reasonable step that a parent or caregiver may take. For forward-facing and high-back booster seats, the agency will also permit evaluators to use all available remedy methods indicated in the vehicle owner's manual to adjust head restraints that may cause gaps.

Prior to the pilot study, the agency was unsure not only as to whether there was a need to develop a criterion to address CRS stability on the vehicle seat back, but also as to what would qualify

[48] The mid-track position is indicative of the seating location of the mid-sized male driver dummy in frontal and side NCAP tests.

[49] *See http://www.cpsboard.org/techmanual.htm,* Page 137.

[50] *See http://www.car-safety.org/guide.html.*

[51] *See http://www.cpsboard.org/techmanual.htm,* Page 137.

[52] SFAD 2 is the static force application device used in FMVSS No. 225 testing to test lower anchorage and tether anchorage strength when seat belts are NOT used to secure a child restraint system in the vehicle.

as an objective criterion. Accordingly, the agency used the pilot study to both assess the need for a criterion, and also to evaluate a potential objective criterion. In particular, the agency assessed whether requiring a minimum of 50 percent contact between the CRS and the vehicle seat back was needed to ensure proper fit. That is, if a forward facing CRS or a booster could not be installed such that at least 50 percent of its rear surface was in contact with the vehicle seat back, then a note to that effect was made on the pilot study evaluation forms, as shown in Appendix C.

The agency also evaluated whether this criterion, if needed, was both sufficient and objective. For the purposes of the pilot study, it was not necessary for a child restraint to meet this requirement to achieve acceptable fit.[53] Although the agency observed several instances during the pilot study in which child restraints could not be installed in certain vehicles to meet this requirement, with the exception of one vehicle-CRS combination, each of these vehicle-CRS combinations also failed to meet an additional fit requirement. Some of the restraints that did not meet the seat back contact requirement could not be installed to meet the CRS manufacturer's installation instructions; others, when installed, could be moved more than one inch side-to-side or front-to-back. For these reasons, and since the agency could not find data regarding an appropriate amount of surface area contact between a child restraint and the vehicle seat back or seat pan, NHTSA is specifically seeking comment on whether a vehicle seat back-to-CRS contact criterion is necessary and should be included on the final set of evaluation forms. If such a criterion is deemed necessary, the agency is also seeking comment on what the appropriate, objective criteria should be. Similarly, the agency is also seeking comment on whether it should adopt a requirement that assesses CRS stability on a vehicle seat pan. Although such a criterion was not evaluated during the pilot study, the agency did observe several instances in which large gaps could be seen under an installed CRS due to CRS incompatibility with vehicle seat bights or seat pan contours. The agency is also seeking comment on what an appropriate, objective seat pan contact criterion would be, should it be deemed necessary.

[53] During the pilot study, the agency made an attempt to develop an objective criterion for contact between the CRS and the vehicle seat and felt 50 percent contact was a reasonable starting point for evaluation.

The agency is proposing an additional assessment that pertains to whether a rear-facing CRS contacts the vehicle seat in front of it when installed. Certain vehicle manufacturers prohibit rear-facing child restraints from touching the front seat back because of potential interference with advanced air bag sensors. Similarly, child restraint manufacturers may also require that an installed child restraint may not come within a specified distance of the front seat back. NHTSA tentatively believes that, if the CRS user's manual or the vehicle owner's manual specifies that either the child restraint may not contact the seat back in front or that a certain distance must be maintained between the CRS and the back of the front seat, we should take this into consideration. The child restraint should be installed and assessed for fit in the vehicle such that the specified distance (if any) is maintained. For fit assessments under the vehicle-CRS program, the agency is proposing that manufacturers make two assessments with respect to the front seat position—one with the front seat set to its mid-position on its seat track and one with the front seat set to its forward-most position on its seat track.[54] The agency acknowledges that not all front seats will be able to be positioned in their mid-track position when a CRS is installed rear-facing in the seat behind it. As long as the front seat can be placed in any lockable position with its seat back at the vehicle manufacturer's nominal seat back angle, a CRS can be considered to meet the fit assessment conditions in that vehicle. While it may be impractical to move the driver's seat to its full forward position while operating the vehicle, the consumer has the option of moving the front passenger seat of a vehicle to that location to accommodate a rear-facing CRS, even if that means other adult passengers may also have to sit in the rear seat. The agency expects manufacturers to note any fit recommendations that require a front seat to be placed forward of the mid-track location. We intend to disseminate that information to consumers.

The agency understands that vehicles of the same make and model can have different upholstery and options that may affect the installation of a child restraint. In the agency's experience, however, these variations have not been severe enough to affect the ability to install the same child restraint within variations of one vehicle make and model. That said, the agency expects vehicle manufacturers to exercise due care; if a particular trim line or vehicle option will have an effect on the consumer's ability to achieve proper vehicle-CRS fit, the manufacturer should not recommend that vehicle-CRS combination for this program.

[54] Mid-position for these fit assessments is taken to be the midpoint between the full-forward and full-rear position of the seat on its mid-track, using only the primary seat fore-aft controls. If a particular vehicle is available with different front seat options, the manufacturer should exercise due care by assessing fit in the vehicle seat whose mid-track seat position would be rear-most with respect to the child restraint. During all assessments, the front seat back should be set to the vehicle manufacturer's nominal seat back angle.

F. Vehicle Owner's Manual

Proper installation of a child restraint requires that the parent or caregiver read and follow all the requirements of both the vehicle owner's manual and the child restraint user's manual. However, NHTSA is aware of some cases in which the vehicle cannot accommodate the child restraint properly due to constraints imposed by either the child restraint manufacturer or the vehicle manufacturer. As such, NHTSA has decided to propose the following criterion in the "Vehicle Owner's Manual" category for rear-facing CRS, forward-facing CRS, and boosters:

—Can the CRS be installed (rear-facing and forward-facing CRS) or booster be positioned to meet both the restraint manufacturer's and the vehicle manufacturer's instructions?

It is important for parents and caregivers to follow all instructions from both child restraint and vehicle manufacturers, to ensure that the maximum protection possible is afforded. If a child restraint's user's manual advises that the CRS should not be used in a vehicle having a particular type of seating arrangement, this restraint would not meet the assessment conditions. That is, NHTSA would deem this CRS as not fitting a vehicle with that type of seating arrangement, even if the vehicle manufacturer had identified the CRS as one that fits the vehicle. Such an instance may arise if a vehicle manufacturer recommended a child restraint for a particular vehicle that has a specific type of side air bag and the CRS manufacturer's instructions prohibit the installation of that particular CRS next to that type of side air bag.

A lack of information can be challenging for parents and caregivers. It is prudent for both vehicle and child restraint manufacturers to provide sufficient information regarding proper use. As observed in the pilot study, there are instances in which specific features cannot be used or in which the full use of features on the restraint

cannot be realized. Not only can this be a disappointment to caregivers, but it can also result in consumers improperly installing the child restraint. For example, suppose a vehicle manufacturer established a maximum weight for children who should be using CRSs with the LATCH system, but did not include the LATCH anchor limit information in the vehicle owner's manual. The harnessed restraint installed with LATCH should be reinstalled with the seat belt when the vehicle's LATCH anchor weight limits are exceeded. However, a parent who was not aware of the weight limit might fail to reinstall the CRS with the vehicle belt after his or her child's weight exceeded the vehicle's LATCH anchor weight limit.

Along similar lines, the vehicle should accommodate the child restraint so that the CRS may be installed to meet the child restraint manufacturer's instructions. For example, for rear-facing infant seats, the carry handle's proper travel position must be reached. If the carry handle makes contact with the vehicle's front seat backs or center console when placed in this position and either the vehicle owner's manual or the child restraint user's manual prohibits such contact, the child seat should not be installed for use in this position in the subject vehicle. A similar rationale should be applied for convertible seats and/or all-in-one seats for which seat back contact is prohibited when positioned rear-facing. Another example may be when a forward-facing child restraint's user's manual states that the restraint's seat back must make full contact with the vehicle seat back, but this condition cannot be achieved because of the seat back or seat pan contour, a high seat bight, or head restraint interference. The restraint should have the ability to be properly utilized in every mode of use and in every adjustment position as described in the manual so that parents and caregivers can properly adjust the child restraint to accommodate the growth of their child(ren).

G. Weight Limits

Most forward-facing child restraints are equipped with internal harness systems that are designed for children weighing 40 pounds or less; however, many child restraint manufacturers now make forward-facing child restraints that are designed for heavier, taller children. These child restraints come with an internal harness system that can be used for children weighing up to 65 pounds, and in some cases, 80 pounds. As mentioned previously, these restraints are informally known as "high-weight harness" restraints. For vehicles that have established child weight limits for their LATCH anchors and those weight limits are lower than the upper child weight limits of these high-weight harness restraints, parents and caregivers should not install or continue to use these CRSs using the LATCH system when children surpass the upper weight range allowed by the vehicle LATCH anchors. In most cases, when the child's weight exceeds the vehicle manufacturer's LATCH child weight limit, the child restraint's lower attachments and/or top tether may have to be detached from the vehicle, and the vehicle seat belt is then used to install the child restraint. In some instances, however, the weight limit established by the vehicle manufacturer for the vehicle's top tether anchor may be higher than that for the vehicle's lower anchors and the top tether may continue to be used after the CRS transitions from LATCH to a seat belt, until a new weight threshold is reached. Regardless of whether the CRS is installed with lower attachments or seat belts, many vehicle and child restraint manufacturers require that the tether also be disconnected once the child reaches a certain weight.

As some vehicle manufacturers do not include information pertaining to the child weight limits for LATCH use in the vehicle owner's manuals, NHTSA is concerned that many parents and caregivers are not given information as to whether they may have to disconnect the child restraint from the LATCH anchors and use the vehicle seat belts as their child gets heavier. There can also be confusion if the weight limits of the CRS and the vehicle LATCH system do not match. To ensure that parents and caregivers are provided with adequate information for proper restraint use and to improve the fit of CRSs in vehicles, NHTSA is proposing the following scenarios to assist vehicle manufacturers in their fit assessment process. In the following scenarios, the LATCH lower anchors and the top tether anchor have the same child weight limit or a LATCH weight limit is not provided by the vehicle manufacturer.

- If the recommended CRS has a maximum child weight limit that is 40 pounds or less, NHTSA will evaluate fit using LATCH lower anchors (with tether) or using seat belts (with tether), at each applicable seating position;
- If the recommended CRS has a maximum child weight limit that is greater than 40 pounds and the vehicle manufacturer does include a child weight limit for LATCH use in the vehicle owner's manual, NHTSA will evaluate fit at each applicable seating position as follows:

(1) If the recommended CRS's maximum child weight limit is less than or equal to the child weight limit specified in the vehicle owner's manual for LATCH use, vehicle-CRS fit may be assessed using LATCH lower anchors (with tether) or using seat belts (with tether);

(2) If the recommended CRS's maximum child weight limit is greater than the child weight limit specified in the vehicle owner's manual for LATCH use, vehicle-CRS fit may be assessed using:

(a) LATCH lower anchors (with tether) or seat belts (with tether)—for children weighing up to the child weight limit specified in the vehicle owner's manual for LATCH use; and

(b) Seat belts only—for children weighing above the child weight limit specified in the vehicle owner's manual for LATCH use.

- If the recommended CRS has a maximum child weight limit that is greater than 40 pounds and the vehicle manufacturer does NOT include a child weight limit for LATCH use in the vehicle owner's manual, NHTSA will evaluate fit at each applicable seating position using:

(1) LATCH lower anchors (with tether) or seat belts (with tether)—for children weighing up to 40 pounds; and

(2) Seat belts only—for children weighing more than 40 pounds.

The agency believes the situation can exist where a vehicle manufacturer could specify a child weight limit for the LATCH system in which the lower anchors have a limit that differs from the weight limit of the top tether. In those situations, we believe the below scenarios would be appropriate for determining whether the lower anchors and top tether should be used. With regard to the lower anchors, we propose that NHTSA will attach the lower anchors if the CRS child weight limit is less than or equal to the anchor's child weight limit provided by the vehicle manufacturer. If the CRS child weight limit is greater than the vehicle's anchors child weight limit, we would not attach lower anchors and would use seat belts instead when assessing the fit of the CRS as the CRS is configured for children weighing above the child weight limit specified in the vehicle's owner manual for LATCH lower anchors. With regard to the top tether, we propose that NHTSA will attach the tether if the CRS child weight limit is less than or equal to the tether child weight limit provided by the vehicle manufacturer. If the CRS child weight limit is greater than the vehicle's tether

weight limit, we would not attach the top tether. That is, we would assess fit without using the tether. A summary of the above scenarios is shown in Appendix E.

If NHTSA finds that a CRS does not fit a vehicle seating position when attached by the LATCH system or the seat belt system as described here, NHTSA plans to take action as proposed in the "Program Distribution" section (VII–C).

H. Rear-Facing CRS

Frontal crashes are the most frequently occurring types of crashes. In a frontal crash, a rear-facing CRS acts to cradle the child, prevents the child's head from snapping backward with respect to its body, and helps distribute crash forces over the child's head, neck, and back, thereby reducing the potential for injury to any one body region. It is especially important to face infants (children under one year old AND under 20 lbs) rear-facing, as the child's neck has not yet matured to support the child's head in a frontal crash.

To balance safety and comfort for children restrained rear-facing, it is also imperative that parents and caregivers achieve the appropriate recline angle for rear-facing restraints.[55] This angle, which is recommended by the CRS manufacturer, is typically specified to be between 30 and 45 degrees from vertical, and must be determined when the vehicle is on a level surface. Child restraint manufacturers often equip rear-facing child restraints with a level indicator so that caregivers can install the CRS at the appropriate angle. The prescribed angle must be especially maintained for newborns to prevent their airways from being restricted. As evidenced by the agency's pilot study, parents and caregivers may find it particularly difficult to achieve the appropriate recline angle when installing a rear-facing CRS in a vehicle that has an extreme seat pan contour.

NHTSA's pilot study revealed several instances in which anti-rebound bars, equipped on some child restraints, increased stability on the vehicle seat, particularly for the rear center seating position.[56] The agency also observed that these devices can actually help parents and caregivers to achieve and maintain the recommended recline angle for the CRS.

With these considerations in mind, the agency is proposing the following additional assessment criteria for rear-facing CRS:

—Can the CRS be installed to the recline angle specified by the manufacturer?
—Can the anti-rotational device, if applicable, be adjusted/operated/installed properly?

A rear-facing child restraint should be able to be installed at the manufacturer's prescribed angle (using any level indicators included) when the vehicle is on level ground. The agency is not proposing to permit the use of pool noodles, towels, or other objects to achieve the proper angle for the reasons specified previously. NHTSA is also proposing that an assessment of the installation, operation, and adjustment of anti-rotational devices be made for applicable CRS when installed rear-facing. If the device cannot be used, or if using it prohibits a tight fit, the restraint would not meet the assessment conditions for fit.

XI. Conclusions and Effective Date

For the reasons described above, the agency believes that there is a need to address vehicle-CRS fit via a consumer information program. We are proposing that a voluntary Vehicle-CRS Fit assessment program would be an effective method of meeting this need, as our pilot study showed it to be a viable option. To fulfill the participation conditions for the program, the agency is proposing that vehicle manufacturers follow a list of criteria, similar to those the agency is proposing in Appendix D, to determine CRS that fit in various vehicle models.

Comments are requested on the program, including the criteria described in this document to assess a proper fit of a CRS in a vehicle, and the conditions we are considering setting for participation in the program (conditions that vehicle manufacturers have to meet to have their information listed on Safercar.gov).

We are proposing that the program begin with vehicle model year 2012. However, we are requesting comments on the appropriate lead time for vehicle manufacturers to prepare for and participate in the program. Under our proposed program, vehicle manufacturers will submit recommendations of CRS that fit in their vehicle models to the agency via the *Buying a Safer Car* submission, which is collected annually. Although recommendations will be valid only for vehicle-CRS pairs, vehicle manufacturers need not provide data for all of their vehicle models in order to participate. The agency hopes that over time, a wealth of information will be generated.

As discussed, in the interest of time and simplicity, the proposed program only includes objective fit criteria. Such objective criteria quantify fit in a clear manner, which vehicle manufacturers can quickly comprehend and use to start providing accurate assessments. The agency plans to reevaluate the program after its inception to ensure that consumers are receiving useful and complete information. If the agency determines that it is warranted and practical, additional CRS ease of fit criteria could be added. The agency also expects to revisit other aspects of the program, such as the number and type of fit suggestions being made by vehicle manufacturers. In particular, if the program is adopted, as proposed, the agency may reevaluate whether vehicle manufacturers may continue to claim vehicle-CRS fit for either LATCH or vehicle belts, or decide if the manufacturer must instead claim fit for both systems of attachment.

While vehicle manufacturers will be expected to report CRS fit under the proposed program, we expect there to be motivation for CRS manufacturers to share in the process by identifying vehicles that their products can fit and reporting their findings to vehicle manufacturers. This serves both the vehicle manufacturers' needs, the CRS manufacturers' needs, and consumers' needs. At this time, the agency does not plan to collect CRS fit information from CRS manufacturers directly. The agency believes that, in the interest of time, requesting this information from the vehicle manufacturers is the most appropriate approach. As mentioned, NCAP's *Buying a Safer Car* information request should permit NHTSA to gather this information from the vehicle manufacturers in an organized and efficient manner. Furthermore, the agency does not currently have a means to collect similar information from the CRS manufacturers. That being said, in the interest of providing consumers with a greater number and variety of CRS from which to choose from, the agency is requesting comments on an alternative or additional approach to collecting this information.

XII. Paperwork Reduction Act

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under the Paperwork Reduction Act of 1995, a person is not required to respond to a

[55] *See http://www.car-safety.org/rearface.html.*

[56] To limit inertia-induced rotation of a rear-facing child restraint upon rebound in a frontal or rear impact crash, many CRS come equipped with an anti-rebound bar. This device serves not only to transmit rotational forces seen by the CRS into the vehicle seat back during sudden changes in velocity, but also may reduce the chance of injuries resulting from a child's contact with the vehicle seat during rebound.

collection of information by a Federal agency unless the collection displays a valid OMB control number with an expiration date. Before seeking OMB approval, Federal agencies must publish a document in the **Federal Register** providing a 60-day public comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

NHTSA believes that the consumer information program described in this request for comments, if implemented, may result in a collection of information burden on motor vehicle manufacturers, even if the manufacturers provide the information voluntarily. In a separate **Federal Register** document, NHTSA will provide a full description of the proposed collection of information, including: (1) A discussion of the need for the information and the proposed use of the information; (2) a description of the likely respondents (including estimated number and proposed frequency of response to the collection of information); and (3) an estimate of the total annual reporting and recordkeeping burden resulting from the collection of information. A 60-day public comment period will be provided when the description of the proposed collection of information is published.

XIII. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.*

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final decision, we will consider that comment as an informal suggestion for future action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: February 18, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

Appendix A: Worldwide Child Restraint Consumer Information Programs

In developing NHTSA's Vehicle-CRS Fit program, the agency considered other international consumer information programs for child restraints. Some of the most prominent are briefly explained below.

A. Child Restraints Evaluation Program (CREP)

The New South Wales Roads and Traffic Authority joined with the National Roads and Motorists Association and the Royal Automobile Club of Victoria to establish a joint program to assess both the relative performance and the ease of using child restraints available in Australia. The resulting program, which began in 1994, is known as CREP, or the Child Restraints Evaluation Program. In addition to frontal and side impact sled testing of child restraints based on the Australian Standard AS 1754, CREP covers installation and compatibility with vehicles and features specific to the child restraint itself. The CREP criteria assess how easily child restraints can be installed as well as how easily a child can be secured. They also include an evaluation of the instructions, the clarity and quality of labeling and packaging, and vehicle compatibility. CREP does not address CRS compatibility as it relates to specific vehicles; therefore, the agency is not proposing this approach.

B. Consumers Union

Consumers Union (CU), publisher of *Consumer Reports* magazine, is a nonprofit membership organization that evaluates child restraints in dynamic sled tests, assesses their ease of use, and evaluates their compatibility with vehicles. In the United States, CU rates child restraints by evaluating the ease of using installation and harness features as well as the ease of placing and removing the child in the restraint. To evaluate compatibility, a few vehicles are selected from each model year that span a variety of body types and features related to child restraint installation. CU raters perform CRS installations in each of these vehicles to generally assess ease of installation. They do not, however, publish specific combinations or suggestions for fit between child restraints and vehicles. In addition, CU conducts sled testing to assign a dynamic performance rating to

the child restraint. All of the items are evaluated on a five-part scale using the following rankings: "Excellent," "Very good," "Good," "Fair," and "Poor." The ease of use, installation, and dynamic performance ratings are all combined into an overall rating for consumers based on the same five-part scale. Because the agency is primarily focused on proposing a program that addresses vehicle-CRS compatibility as it relates to specific vehicle and restraint pairs, CU's method of evaluating CRS was not selected.

C. EuroNCAP

The European New Car Assessment Program, or EuroNCAP, also provides consumers with child occupant protection ratings for its vehicles. Vehicle manufacturers recommend child restraints suitable for installation in their products during their offset frontal and 90-degree side impact crash tests.[57] Each vehicle's rear seat is fitted with two child restraints: One suitable for a 3-year-old child and another suitable for an 18-month-old infant. Technicians evaluate the installation of the child restraints prior to the crash tests, and they assess the quality and completeness of the child restraint's labeling information. The dynamic performance of the child restraint is determined by evaluating injury readings from child dummies placed in these child restraints. It is then combined with the installation and labeling evaluation as part of a vehicle's overall child protection rating. Points earned during the evaluation are converted into a star rating. The overall child protection ratings are attributed to the vehicle in question rather than the particular child restraint.[58] In addition, the ratings are specific to that combination of vehicle and CRS and do not necessarily indicate the safety performance of other child restraints in that vehicle. At this time, there are no stand-alone evaluations of child restraints conducted by EuroNCAP. Due to the fact that only a small portion of EuroNCAP's approach is related to vehicle-CRS fit, the agency is not proposing to use this method.

D. Japan NCAP (JNCAP)

The Japanese Ministry of Land, Infrastructure and Transport, in cooperation with the National Organization for Automotive Safety & Victims' Aid, tests and evaluates the safety of automobiles as part of its New Car Assessment Program (JNCAP). In 2002, the JNCAP began rating child restraints for crash protection as well as usability.

JNCAP dynamically rates Japan's most popular child restraints by conducting a frontal sled test in excess of the country's minimum child restraint performance requirements.[59] Child restraints containing age-appropriate dummies are subjected to a 35 mph (56 km/h) sled pulse which is based on the characteristics of the European child restraint safety standard, Economic Commission for Europe's Regulation 44 (ECE R44). The child restraints are installed on a sled buck based on the Toyota Estima, a popular family vehicle similar to the Toyota Sienna in the U.S. The rating is comprised of an evaluation of dummy readings and kinematics, the level of physical damage (if any) to the child restraint, and the release (if any) of child restraint buckles or other hardware. A four-tier rating system is used: "Excellent," "Good," "Normal," and "Not Recommended."

JNCAP's usability ratings are very similar to the structure and content of NHTSA's Ease of Use (EOU) program for child restraint usability. Five child restraint specialists rate each child restraint chosen for dynamic testing across five categories of usability, each of which contains a number of different features for evaluation. The specialists in this program rate each feature on a scale of 1 to 5, with "3" representing an "average" feature. The ratings given by all five specialists for each of the five categories of usability are averaged; all of the features within each category are then averaged as well. No overall rating is provided, but the five usability category scores are presented to the consumer as a numerical value from 1 to 5. Because JNCAP's ratings system does not address vehicle-to-CRS compatibility, this approach is not being proposed.

E. New Program for the Assessment of Child Restraint Systems (NPACS) and the Child Seat Rating Scheme

On August 3, 2009, the United Kingdom Transport Research Laboratory (TRL) announced it would launch a new five-star rating scheme for child restraints in 2010. In its inception, TRL relied heavily on the NPACS (New Programme for the Assessment of Child-restraint Systems) protocol published by the U.K. Department for Transport. Though all child restraints sold in the U.K. must meet the minimum performance standards of ECE R44, TRL's new program will subject products to the NPACS testing protocol, which goes above and beyond the minimum performance standards set forth by ECE R44. The NPACS protocol (as well as the new TRL CRS program) includes a side impact sled test as well as a usability assessment, neither of which TRL felt were addressed sufficiently in ECE R44. The rating scheme that was developed under these efforts will present individual products' safety in terms of an overall star rating, which is based on frontal and side sled test performance as well as a usability assessment. TRL hopes that the ratings will be useful to consumers seeking information on the comparative performance of child restraints as well as provide a new promotional tool for manufacturers and retailers. Again, because the NPACS protocol does not address CRS-to-vehicle compatibility as it relates to specific product pairs, the agency is not proposing to use this protocol.

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[57] The EuroNCAP primarily provides consumers with crash safety ratings for vehicles sold throughout Europe. The program is funded by various European governments and private motoring clubs. EuroNCAP has traditionally rated vehicles for crashworthiness based on an offset frontal crash test at 40 mph (64 km/h) and a 90 degree side impact crash test at 31 mph (50 km/h). Beginning in 2009, a previously optional side impact pole test became a mandatory part of the crashworthiness rating.

[58] However, the child restraints tested in each vehicle are still displayed on the EuroNCAP Web site.

[59] To be sold in Japan, child restraints may be certified to ECE R44, U.S. FMVSS No. 213, or Japan's own regulation, JIS D 0401. The number of child restraints tested each year varies, but in April 2009, results were published for five CRS that were deemed "currently available."

Appendix B: Pilot Study Evaluation Form

NHTSA Vehicle-CRS Fit Assessment Form - Pilot Study

Vehicle Make & Model: _____ Vehicle Model Year: _____

CRS/Booster Make & Model: _____ Date of Manufacturer: _____

CRS/Booster Orientation: _____ Mode of Install: _____

				SEATING POSITION							
		PASS	FAIL	1	2	3	4	5	6	RESULT / N/A	NOTES
Top Tether Anchorages	Can top tether be attached to tether anchor using one hand from position of installing?	Yes	No								
	Can the top tether be tightened properly? (Cannot slip off head restraint or catch on seat and distance between CRS and top tether hook is adequate.)	Yes	No								
Lower Anchorages	Are the lower anchors accessible? Is it possible to use them? (Must get positive attachment on each anchorage with sufficient clear space around the anchorages. Can move buckle out of the way.)	Yes	No								
	Can the lower attachments be tightened after the initial connection to the lower anchorages?	Yes	No								
	When installed using lower anchors, is there access to the vehicle's adjacent seat belt buckles (if applicable - outboard seating positions only)?	Yes	No								
	Can lower anchor attachments be detached once tension is released?	Yes	No								
Vehicle Seat Belts	Does the CRS fit between the relevant seat belt buckle and anchor point? (CRS is at least slightly narrower than the distance between the belt buckle and anchor point; can see both belt and buckle anchors)	Yes	No								
	Is seatbelt length sufficient to properly install CRS?	Yes	No								
	Does the seat belt buckle interfere with proper CRS installation? (Buckle routes through CRS or twisting of buckle stalk required for install)	No	Yes								
	Does the installation limit the use of any belt positioning hardware or lock off hardware on CRS? (Can be done with one hand.)	No	Yes								
Head Restraints	Does the head restraint cause interference using all available methods of remedy permitted in vehicle owner's manual (head restraint removal, moving upward into a locked position, tilting rearward)?	No	Yes								
CRS Installation & Stability	Is CRS stable on vehicle seat bottom when installed? (Seat pan contour does not affect stability and at least 80% of CRS rests on vehicle seat pan)	Yes	No								
	Does CRS rest securely on vehicle seat back? (Seat back contour does not affect stability and at least 80% of CRS rests on vehicle seat back - adjustable seat backs can be adjusted)	Yes	No								
	Can the CRS be installed so that there is no more than 1" of movement side-to-side or front-to-back when pulled at belt or LATCH path? CRS must remain stable and properly installed on vehicle seat (even when tugged at outboard side at base of CRS when installed with vehicle belt).	Yes	No								
	Is the CRS harness fully operational when the CRS is installed properly?	Yes	No								
Anti-Rotational Device	Can the anti-rotational device (includes rebound bars and lower tether attachments for rearward installations) be adjusted/operated/installed to achieve the desired position?	Yes	No								
	Can the anti-rotational device be removed?	Yes	No								
Rear-Facing CRS	For rear-facing CRS, can the CRS be properly positioned rear-facing so as to not contact the front seat back or so as to achieve the minimum distance between the CRS and seat back as stated in the CRS user's manual? (Front seat back can be adjusted to position less than vertical and front seat can be positioned to forward-most position on seat track)	Yes	No								
	For rear-facing CRS, forward-facing CRS, and belt-positioning booster, must vehicle seat infront of CRS be moved forward of mid-position with seatback at 25° angle to achieve correct position?	No	Yes								
	Can the CRS be installed at the proper angle? (No pool noodle needed)	Yes	No								
Belt-Positioning Booster Seats	Does the installation prohibit proper seat belt routing? (Must be able to route seat belt in single action.)	No	Yes								
Vehicle Owner's Manual	Does any of the information in the vehicle owner's manual or CRS user's manual prohibit the installation of the recommended CRS?	No	Yes								
	Can CRS be installed to meet CRS manufacturer's instructions?	Yes	No								
Weight Limits	Is the weight limit of the CRS plus the highest weight applicable child less than the weight limit specified for the LATCH anchors?	Yes	No								
		OVERALL RESULT									

Appendix C: Observations From Vehicle-CRS Pilot Study

CRS Model	Mitsubishi Eclipse		Pontiac 5		Chevrolet Impala		Chrysler Sebring		Dodge Charger		Ford Focus	
	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH
Combi Shuttle EX	N(b)	N(f)	N(i)	Y	N(b)(i) ..	N(c)	N(c)(r) ..	N(r)	N(b)	Y	Y	Y
Graco Snugride 32 ..	N(b)	Y*	N(i)	Y	N(b)	Y	Y	N(c)	N(b)	N(l)	Y	Y
Safety 1st Designer 22.	N(b)	N(f)	N(b)(r) ..	N(l)	N(b)	Y	N(f)	N(l)	N(b)(c)	N(c)	N(m)	Y
Graco ComfortSport	N(b)	Y*	Y*	Y*	Y	Y	N(c)(f) ..	N(c)	N(b)(r)	N(r)	N(t)	N(t)
Britax Boulevard CS	N(b)	Y*	Y*	Y*	N(b)	Y	Y	Y	N(b)	Y*	Y*	N(l)
Sunshine Kids Radian XT.	N(b)	Y*	Y*	Y*	N(b)	Y*	N(b)(c)	N(c)	N(b)	N(l)	Y*	Y*
Safety 1st Summit ...	N(b)	Y	N(b)(c)	N(l)	N(b)	Y	N(b)(c)	N(c)	N(b)	Y	Y	Y
Britax Frontier	N(b)	Y	N(b)(h)	N(h)	N(b)	Y	N(b)	Y	N(b)(c)	N(c)(f) ...	N(b)	Y
Learning Curve B505	N(h)(s)	n/a	Y(c)	n/a	Y	n/a	Y	n/a	N(b)	n/a	N(b)	n/a
Magna Clek Olli	Y	N(l)	Y	Y	Y	Y	Y	Y	N(b)	N	N(b)	Y
Evenflo Amp	Y	n/a	N(b)(c)	n/a	Y	n/a	N(c)	n/a	N(b)	n/a	N(b)	n/a
Safety 1st All in One	N(c)(r) ..	N(l)	N(b)(r) ..	N(l)	N(b)(r) ..	N(r)	N(b)(r) ..	Y*	N(c)	N(c)(f) ...	N(t)	N(l)(t)
Evenflo Symphony ...	N(b)	Y*	N(c)(h)	N(f)	N(b)	Y	Y	Y	N(b)(c)(r)	N(f)	N(t)	N(t)

N—Proper fit could not be achieved in every allowable seating position and mode of CRS use for this combination.
Y—Proper fit was achieved for this vehicle-CRS combination in every allowable seating positioning and mode of use for this combination.
*—Front seat may need to be positioned in front half of seat track to accommodate CRS installed rear-facing.
(b)—Seat belt and child restraint are incompatible.
(c)—Seat or seat back contour creates instability and does not allow for a proper install.
(f)—Could not achieve 1″ or less of movement at the belt/LATCH path for this installation.
(h)—Height of roofline prevents the use of this CRS in its highest position.
(i)—Seat belt latch plate button interfered with belt lock-off hardware.
(l)—Lower anchors and child restraint are not compatible.
(m)—Instructions in the CRS or vehicle owner's manual prohibited this installation.
(r)—Proper recline could not be achieved without use of a towel or pool noodle.
(s)—Unwanted slack is created between the vehicle seat belt and the belt guide on this CRS.
(t)—Tether cannot be properly tightened.

CRS Model	Hyundai Elantra		Mazda Protege		Toyota Yaris		Subaru Forester		Nissan Murano		Toyota RAV4	
	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH	Seat belt	LATCH
Combi Shuttle EX	N(b)	Y	Y	Y	N(b)(c)(r)(m)	Y	N(i)	Y	Y	Y	N(b)	Y
Graco Snugride 32 ..	Y	Y	Y	Y	N(b)(m)	Y*	Y	Y	Y	Y	N(b)	Y
Safety 1st Designer 22.	Y	Y	N(b)	Y*	N(b)(c)	Y	N(i)	Y	N(b)	Y	N(b)	Y
Graco ComfortSport	Y	Y	N(b)	Y*	N(b)(c)	N(c)(l)	Y	Y	Y	Y	N(b)	Y
Britax Boulevard CS	Y	Y	N(b)	Y*	N(b)(c)	Y*	Y	Y	Y	Y	N(b)	Y
Sunshine Kids Radian XT.	N(b)	Y	N(b)	N(l)	N(b)	N(l)	N(f)	Y	N(b)	Y	N(b)	N(l)
Safety 1st Summit ...	N(f)	N(f)	N(b)	N(l)	N(b)(c)	N(l)	Y	Y	Y	Y	N(b)	Y
Britax Frontier	N(b)	Y	N(b)	Y	N(b)(h)(c)	N(h)(l) ...	Y	Y	N(b)	Y	N(b)	Y
Learning Curve B505	Y	n/a	Y	n/a	N(b)	n/a	Y	n/a	Y	n/a	Y	n/a
Magna Clek Olli	Y	N(l)	Y	Y	N(b)	N(b)(l) ...	Y	Y	Y	Y	Y	Y
Evenflo Amp	Y	n/a	Y	n/a	N(b)(c)	n/a	Y	n/a	Y	n/a	Y	n/a
Safety 1st All in One	N(r)	Y	N(r)	N(r)	N(c)(r)	N(c)(r) ...	Y	Y	N(b)(r) ..	N(r)	N(b)	Y
Evenflo Symphony ...	Y	Y	N(b)	Y*	N(b)(c)	N(l)	Y	Y	Y	Y	N(b)	Y

N—Proper fit could not be achieved in every allowable seating position and mode of CRS use for this combination.
Y—Proper fit was achieved for this vehicle-CRS combination in every allowable seating positioning and mode of use for this combination.
*—Front seat may need to be positioned in front half of seat track to accommodate CRS installed rear-facing.
(b)—Seat belt and child restraint are incompatible.
(c)—Seat or seat back contour creates instability and does not allow for a proper install.
(f)—Could not achieve 1″ or less of movement at the belt/LATCH path for this installation.
(h)—Height of roofline prevents the use of this CRS in its highest position.
(i)—Seat belt latch plate button interfered with belt lock-off hardware.
(l)—Lower anchors and child restraint are not compatible.
(m)—Instructions in the CRS or vehicle owner's manual prohibited this installation.
(r)—Proper recline could not be achieved without use of a towel or pool noodle.
(s)—Unwanted slack is created between the vehicle seat belt and the belt guide on this CRS.
(t)—Tether cannot be properly tightened.

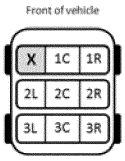
Appendix D: Proposed Vehicle-CRS Fit Assessment Forms

NHTSA Vehicle/CRS Fit Rating Form - Rear-Facing CRS

Vehicle Make & Model: _____ Vehicle Model Year: _____

CRS Make & Model: _____ CRS Date of Manufacture: _____

Applicable Seating Positon(s): _____



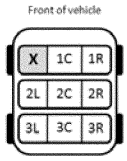
Rear-Facing CRS		PASS	FAIL	Installation Method: Seat Belts	Installation Method: LATCH	RESULT / N/A	NOTES
Tether Anchorages (If Applicable)	Can the rear-facing tether be attached to the appropriate location in the vehicle? (Vehicle must have an acceptable attachment location.)	Yes	No				
	Can the rear-facing tether be properly tightened?	Yes	No				
Lower Anchorages	Can the lower attachments on the CRS be properly attached to the vehicle's lower anchorages? (Must get positive attachment on each anchorage. Can move seat belt buckle out of the way.)	Yes	No				
	Can the lower attachments on the CRS be tightened, if necessary, after the initial connection to the lower anchorages?	Yes	No				
	When the CRS is installed using lower anchorages, is there access to the vehicle's adjacent seat belt buckles? (Applicable for all LATCH positions unless vehicle owner's manual and/or CRS user's manual do not permit.)	Yes	No				
Vehicle Seat Belts	Does the distance between the Type II seat belt's lap belt anchor and buckle allow the child restraint to be installed properly? (CRS is at least slightly narrower than the distance between the belt buckle and anchor point and the seat belt can be buckled.)	Yes	No				
	Is the seat belt length sufficient to properly install CRS using all possible belt paths permitted by the CRS manufacturer and in all rear-facing modes of use?	Yes	No				
	Does the seat belt buckle interfere with proper CRS installation? (Buckle sits on edge of CRS or CRS belt path or buckle routes through belt path when it is not permitted by the CRS manufacturer. Twisting of buckle stalk not permitted.)	No	Yes				
	Does the seat belt latch plate button limit the use of any lock-off or other hardware on the CRS or otherwise prohibit proper installation?	No	Yes				
CRS Installation, Use, and Tightness	Does more than 20% of CRS base/bottom hang over edge of vehicle seat pan?	No	Yes				
	Can the CRS be installed so that there is no more than 1 inch of movement side-to-side or front-to-back when pulled at the LATCH path or belt path?	Yes	No				
	Can the CRS be installed rear-facing so as to achieve the appropriate distance relative to the front seat back as stated in the CRS owner's manual, if applicable? Must also be able to achieve proper placement of CRS carrier handle, if applicable. (Front seat back should be adjusted to vehicle manufacturer's nominal seat back angle and assessments must be made at both the mid fore-aft position on the seat track and the full-forward position. The mid fore-aft position should be determined using only the control that primarily moves seat fore-aft.)	Yes	No				
	If the harness is intended to be accessed when the CRS is installed, can it be tightened?	Yes	No				
Rear-Facing CRS	Can the CRS be installed to the recline angle specified by the manufacturer? (Pool noodles are not permitted.)	Yes	No				
	Can the anti-rotational device, if applicable, be adjusted/operated/installed properly?	Yes	No				
Vehicle Owner's Manual	Can the CRS be installed to meet both the restraint manufacturer's and the vehicle manufacturer's instructions?	Yes	No				
		OVERALL RESULT					

NHTSA Vehicle/CRS Fit Rating Form - Forward-Facing CRS

Vehicle Make & Model: _____ Vehicle Model Year: _____

CRS Make & Model: _____ CRS Date of Manufacture: _____

Applicable Seating Positon(s): _____



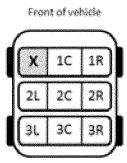
Forward-Facing CRS		PASS	FAIL	Installation Method: Seat Belts	Installation Method: LATCH	RESULT / N/A	NOTES
Top Tether Anchorages	Can the top tether be attached to the appropriate vehicle tether anchor?	Yes	No				
	Can the top tether be properly tightened? (Distance between CRS and top tether hook is adequate.)	Yes	No				
Lower Anchorages	Can the lower attachments on the CRS be properly attached to the vehicle's lower anchorages? (Must get positive attachment on each anchorage. Can move seat belt buckle out of the way.)	Yes	No				
	Can the lower attachments on the CRS be tightened, if necessary, after the initial connection to the lower anchorages?	Yes	No				
	When the CRS is installed using lower anchorages, is there access to the vehicle's adjacent seat belt buckles? (Applicable for all LATCH positions unless vehicle owner's manual and/or CRS user's manual do not permit.)	Yes	No				
Vehicle Seat Belts	Does the distance between the Type II seat belt's lap belt anchor and buckle allow the child restraint to be installed properly? (CRS is at least slightly narrower than the distance between the belt buckle and anchor point and the seat belt can be buckled.)	Yes	No				
	Is the seat belt length sufficient to properly install CRS using all possible belt paths permitted by the CRS manufacturer and in all forward-facing modes of use?	Yes	No				
	Does the seat belt buckle interfere with proper CRS installation? (Buckle sits on edge of CRS or CRS belt path or buckle routes through belt path when it is not permitted by the CRS manufacturer. Twisting of buckle stalk not permitted.)	No	Yes				
	Does the seat belt latch plate button limit the use of any lock-off or other hardware on the CRS or otherwise prohibit proper installation?	No	Yes				
Head Restraints	Does the vehicle head restraint interfere with proper CRS installation? (Can use all available methods of remedy permitted in vehicle owner's manual including head restraint removal, moving upward into a locked position, tilting rearward, etc.)	No	Yes				
CRS Installation, Use, and Tightness	Does more than 20% of the CRS base/bottom hang over the edge of the vehicle seat pan?	No	Yes				
	Can the CRS be installed so that there is no more than 1 inch of movement side-to-side or front-to-back when pulled at the LATCH path or belt path?	Yes	No				
	If the harness is intended to be accessed when the CRS is installed, can it be tightened?	Yes	No				
Vehicle Owner's Manual	Can the CRS be installed to meet both the restraint manufacturer's and the vehicle manufacturer's instructions?	Yes	No				
		OVERALL RESULT					

NHTSA Vehicle/CRS Fit Rating Form - Booster

Vehicle Make & Model: _____ Vehicle Model Year: _____

Booster Make & Model: _____ Booster Date of Manufacture: _____

Applicable Seating Positon(s): _____



Booster Seat		PASS	FAIL	Positioning Method: Seat Belts	Positioning Method: LATCH (If Applicable)	RESULT / N/A	NOTES
Top Tether Anchorages (If Applicable)	Can the top tether be attached to the appropriate vehicle tether anchor?	Yes	No				
	Can the top tether be properly tightened? (Distance between booster and top tether hook is adequate.)	Yes	No				
Lower Anchorages (If Applicable)	Can the lower attachments on the booster be properly attached to the vehicle's lower anchorages? (Must get positive attachment on each anchorage. Can move seat belt buckle out of the way.)	Yes	No				
	Can the lower attachments on the booster be tightened, if necessary, after the initial connection to the lower anchorages?	Yes	No				
	When the booster is positioned using lower anchorages, is there access to the vehicle's adjacent seat belt buckles? (Applicable for all LATCH positions unless vehicle owner's manual and/or CRS user's manual do not permit.)	Yes	No				
Vehicle Seat Belts	Does the distance between the Type II seat belt's lap belt anchor and buckle allow the booster to be positioned properly? (CRS is at least slightly narrower than the distance between the belt buckle and anchor point and the seat belt can be buckled.)	Yes	No				
Head Restraints	Does the vehicle head restraint interfere with proper booster positioning? (Can use all available methods of remedy permitted in vehicle owner's manual including head restraint removal, moving upward into a locked position, tilting rearward, etc.)	No	Yes				
Booster Positioning and Use	Does more than 20% of the booster base/bottom hang over the edge of the vehicle seat pan?	Yes	No				
	Does the positioning prohibit full adjustment of the booster's head restraint or the use of any belt positioning hardware?	No	Yes				
Vehicle Owner's Manual	Can the booster be positioned to meet both the restraint manufacturer's and the vehicle manufacturer's instructions?	Yes	No				
		OVERALL RESULT					

Appendix E: Installation Methods for Assessing Vehicle-CRS Fit

OVERALL CHILD WEIGHT LIMIT IS 40 LBS OR LESS

Is vehicle lower anchor child weight limit in vehicle manual?	Is vehicle top tether anchor child weight limit in vehicle manual?	CRS child weight limit ≤ vehicle lower anchor child weight limit	CRS child weight limit ≤ vehicle top tether anchor child weight limit	Methods of installation that NHTSA will evaluate
Yes	Yes	Yes	Yes	Evaluations Conducted for Children Up to 40 lbs: • Lower Anchors w/Tether or • Seat belts w/Tether.
	No	Yes	N/A	Evaluations Conducted for Children Up to 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether.
No	Yes	N/A	Yes	Evaluations Conducted for Children Up to 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether.
	No	N/A	N/A	Evaluations Conducted for Children Up to 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether.

OVERALL CHILD WEIGHT LIMIT IS GREATER THAN 40 LBS

Is vehicle lower anchor child weight limit in vehicle manual?	Is vehicle top tether anchor child weight limit in vehicle manual?	CRS child weight limit ≤ vehicle lower anchor child weight limit	CRS child weight limit ≤ vehicle top tether anchor child weight limit	Methods of installation that NHTSA will evaluate
Yes	Yes	Yes	Yes	Evaluations Conducted for Children Up To 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether.
			No	Evaluations Conducted for Children Up To Vehicle Tether Anchor Child Weight Limit: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over Vehicle Tether Anchor Child Weight Limit: • Lower Anchors or • Seat Belts.
		No	Yes	Evaluations Conducted for Children Up To Vehicle Lower Anchor Child Weight Limit: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over Vehicle Tether Anchor Child Weight Limit: • Seat Belts w/Tether.
			No	Evaluations Conducted for Children Up To Vehicle Lower Anchor Child Weight Limit: • Lower Anchors or • Seat Belts. Evaluations Conducted for Children Over Vehicle Lower Anchor Child Weight Limit but Under Vehicle Tether Anchor Child Weight Limit: • Seat Belts w/Tether. Evaluations Conducted for Children Over Vehicle Lower Anchor Child Weight Limit: • Seat Belts Only.
	No	Yes	N/A	Evaluations Conducted for Children Up To 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over 40 lbs: • Lower Anchors or • Seat Belts.
		No	N/A	Evaluations Conducted for Children Up To 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over 40 lbs and Under or Equal to Vehicle Lower Anchor Child Weight Limit: • Lower Anchors or • Seat Belts. Evaluations Conducted for Children Over Vehicle Lower Anchor Child Weight Limit: • Seat Belts Only.
No	Yes	N/A	Yes	Evaluations Conducted for Children Up To 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over 40 lbs: • Seat Belts w/Tether.

OVERALL CHILD WEIGHT LIMIT IS GREATER THAN 40 LBS—Continued

Is vehicle lower anchor child weight limit in vehicle manual?	Is vehicle top tether anchor child weight limit in vehicle manual?	CRS child weight limit ≤ vehicle lower anchor child weight limit	CRS child weight limit ≤ vehicle top tether anchor child weight limit	Methods of installation that NHTSA will evaluate
	.....	.....	No	Evaluations Conducted for Children Up To 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over 40 lbs and Under or Equal to Vehicle Tether Anchor Child Weight Limit: • Seat Belts w/Tether. Evaluations Conducted for Children Over Vehicle Tether Anchor Child Weight Limit: • Seat Belts Only.
	No	N/A	N/A	Evaluations Conducted for Children Up To 40 lbs: • Lower Anchors w/Tether or • Seat Belts w/Tether. Evaluations Conducted for Children Over 40 lbs: • Seat Belts Only.

[FR Doc. 2011–4212 Filed 2–24–11; 8:45 am]
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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 28, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2081.

Type of Review: Extension of a currently approved collection.

Title: REG–148867–03 (Final) Disclosure of Returns and Return Information in Connection with Written Contracts or Agreements for the Acquisition of Property and Services for Tax Administration.

Abstract: The regulations clarify that redisclosures of returns and return information by contractors to agents or subcontractors are permissible, and that the penalty provisions, written notification requirements, and safeguard requirements are applicable to these agents and subcontractors. Section 301.6103 (n)–1(d) of the proposed regulations require that contractors, agents, and subcontractors who receive returns or return information under the proposed regulations must provide written notice to their officers and employees of the purposes for which returns or return information may be used and of the potential civil and criminal penalties for unauthorized inspections or disclosures, including informing them of the imposition of punitive damages in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence. Section 301.6103(n)–1(e)(3) of the proposed regulations require that before the execution of a contract or agreement for the acquisition of property or services under which returns or return information will be disclosed, the contract or agreement must be made available to the IRS.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 250 hours.

OMB Number: 1545–1916.

Type of Review: Extension of a currently approved collection.

Title: REG–159824–04 (NPRM) Regulations Governing Practice before the Internal Revenue Service.

Abstract: These regulations set forth minimum standards for State or local bond options.

Respondents: Individuals or households.

Estimated Total Burden Hours: 30,000 hours.

OMB Number: 1545–1774.

Type of Review: Extension of a currently approved collection.

Title: TD 9187 (Final) Extensions of Time To Elect Method for Determining Allowable Loss;

Abstract: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under Section 1.337(d)–2T, Section 1.1502–20 as currently in effect or under Section 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the Section 1.150–20(g) election and to ensure that loss is not disallowed under Section 1.337(d)–2T and basis is not reduced under Section 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 36,720 hours.

OMB Number: 1545–1612.

Type of Review: Extension of a currently approved collection.

Title: REG–209830–96 (TD 8779—Final) Estate and Gift Tax Marital Deduction.

Abstract: The information requested in regulation section 20.2056(b)–7(d)(3)(ii) is necessary to provide a method for estates of decedents whose estate tax returns were due on or before February 18, 1997, to obtain an extension of time to make the qualified

terminable interest property (QTIP) election under section 2056(b)(7)(B)(v).

Respondents: Individuals or households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1462.

Type of Review: Extension of a currently approved collection.

Title: PS–268–82 (TD 8696—Final) Definitions under Subchapter S of the Internal Revenue Code.

Abstract: The regulations provide definitions and special rules under Code section 1377 which affect S corporations and their shareholders.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–1478.

Type of Review: Extension of a currently approved collection.

Title: INTL–9–95 (TD 8702—Final) Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporation's (TD 8702).

Abstract: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–1750.

Type of Review: Extension of a currently approved collection.

Title: Form 8038–R—Request for Recovery of Overpayments under Arbitrage Rebate Provisions.

Form: 8038–R

Abstract: Under Treasury Regulations section 1.148–3(i), bond issuers may recover an overpayment of arbitrage rebate paid to the United States under Internal Revenue Code section 148. Form 8038–R is used to request recovery of any overpayment of arbitrage rebate made under the arbitrage rebate provisions.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 2,458 hours.

OMB Number: 1545–2096.

Type of Review: Extension of a currently approved collection.

Title: REG–157711–02 (TD 9424—Final)—Loss on Subsidiary Stock.

Abstract: This document contains final regulations under sections 358, 362(e)(2), and 1502 of the Internal Revenue Code (Code). The regulations apply to corporations filing consolidated returns, and corporations that enter into certain tax-free reorganizations. The regulations provide rules for determining the tax consequences of a member's transfer (including by deconsolidation and worthlessness) of loss shares of subsidiary stock. In addition, the regulations provide that section 362(e)(2) generally does not apply to transactions between members of a consolidated group. Finally, the regulations conform or clarify various provisions of the consolidated return regulations, including those relating to adjustments to subsidiary stock basis.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 25 hours.

OMB Number: 1545–1395.

Type of Review: Extension of a currently approved collection.

Title: Form 8838—Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.

Form: 8838.

Abstract: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,482 hours.

OMB Number: 1545–2100.

Type of Review: Extension of a currently approved collection.

Title: Primary Contact Information Change Form.

Abstract: Currently taxpayers can only obtain the Primary Contact Information Form by calling EFTPS Customer Service. The taxpayer calls EFTPS Customer Service requesting to change the contact information on their enrollment. As an alternative to faxing, we are offering the taxpayer the option of downloading the form.

Respondents: Individuals or households.

Estimated Total Burden Hours: 200 hours.

OMB Number: 1545–1752.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 2008–38, Revenue Procedure 2008–39, Revenue Procedure 2008–40, Revenue Procedure 2008–41, Revenue Procedure 2008–42.

Abstract: RP 2008–VV allows issuers of life insurance contracts have failed to meet the definition of life insurance contract under section 7702 or to satisfy the requirements of section 101(f) of the Internal Revenue Code to cure these contracts so that they do not fail section 7702 or section 101(f). RP 2008–WW allows issuers of variable contracts have failed to meet the diversification requirements of section 817(h) of the Internal Revenue Code to cure these contracts so that they do not fail section 817(h). RP 2008–XX allows issuers of life insurance contracts whose contracts have failed to meet the tests of section 7702A of the Internal Revenue Code to cure these contracts that have inadvertently become modified endowment contracts. RP 2008–YY allows issuers of variable contracts have failed to meet the diversification requirements of section 817(h) of the Internal Revenue Code to cure these contracts so that they do not fail section 817(h). RP 2088–ZZ provides guidance as to how issuers of life insurance contracts may automatically obtain a waiver under section 7702(f)(8) or section 101(f)(3)(H) of the Internal Revenue Code to remedy certain life insurance contracts for certain reasonable errors that caused a contract to fail to satisfy the requirements of section 7702 or section 101(f).

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,950 hours.

OMB Number: 1545–2187.

Type of Review: Extension of a currently approved collection.

Title: Form 8955–SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits.

Form: 8955–SSA

Abstract: In 2007, the Department of Labor (DOL) published a final rule requiring plans subject to the annual reporting requirements of Title I of Employee Retirement Income Security Act (ERISA) to electronically file the Form 5500, Annual Return/Report of Employee Benefit. In order to accommodate the DOL's mandate for electronic filing of the Form 5500 series, Schedule (SSA) has been eliminated and replaced with Form 8955–SSA. The information provided by plan sponsors on Form 8955–SSA will be transmitted to the Social Security Administration (SSA) who will provide it to separated participants when those participants file for social security benefits.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 166,000 hours.

OMB Number: 1545–1378.

Type of Review: Extension of a currently approved collection.

Title: PS–4–89 T.D. 8580 (Final) Disposition of an Interest in a Nuclear Power Plant.

Abstract: This regulation relates to certain Federal income tax consequences of a disposition of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant. The regulation affects taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addition, the regulation extends the benefits of Internal Revenue Code section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrification Administration.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 575 hours.

OMB Number: 1545–1639.

Type of Review: Extension of a currently approved collection.

Title: REG–106012–98 (T.D. 8936) (Final) Definition of Contribution in Aid of Construction under Section 118(c).

Abstract: The regulations provide guidance with respect to Sec. 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1545–1349

Type of Review: Extension of a currently approved collection.

Title: Cognitive and Psychological Research.

Abstract: The proposed research will improve the quality of the data collection by examining the psychological and cognitive aspects of methods and procedures such as: interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Respondents: Individuals or households.

Estimated Total Burden Hours: 112,500 hours.

OMB Number: 1545–1889.

Type of Review: Extension of a currently approved collection.

Title: Notice 2004–59, Plan Amendments Following Election of Alternative Deficit Reduction Contribution, as amplified by Notice 2006–105, and as modified By Revenue Procedure 2005–71

Abstract: This notice sets forth the procedures for electing an alternative deficit reduction contribution under § 412(l)(12) of the Internal Revenue Code (the Code) (which was added by section 102 of the Pension Funding Equity Act of 2004 (PFEA), Public Law 108–218), as modified by section 402(i) of the Pension Protection Act of 2006 (PPA), Public Law 109–280. Except as outlined below, all references to the Code and the Employee Retirement Income Security Act of 1974 (ERISA) are to the Code and ERISA as in effect on August 16, 2006. Revenue procedure 2005–71 modifies Rev. Proc. 2004–59, 2004–2 C.B. 678, to extend the sunset date of the Section 1441 Voluntary Compliance Program ("Section 1441 VCP") to March 31, 2006.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 400 hours.

OMB Number: 1545–0150.

Type of Review: Revision to a currently approved collection.

Title: Power of Attorney and Declaration of Representative.

Form: 2848, 2848 (SP).

Abstract: Form 2848 is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons. Also used to input representative on CAF (Central Authorization File).

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 936,633 hours.

OMB Number: 1545–2056.

Type of Review: Extension of a currently approved collection.

Title: REG–147144–06 Section 1.367(a)–8 Revisions; (T.D. 9446) Gain Recognition Agreements with Respect to Certain Transfers of Stock or Securities by United States Persons to Foreign Corporations.

Abstract: These regulations under IRC § 367(a) provide rules for taxpayers to avoid recognizing gain under a gain recognition agreement (GRA) if a new GRA and notice statement are filed. The regulations also provide a rule under which a taxpayer may reduce the basis in certain stock to meet one of the requirements for terminating a GRA. These regulations also revise an existing rule to facilitate electronic filing. The revision requires that information that a taxpayer currently would write on the face of its Federal income tax return shall instead be attached as a separate schedule to its return

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 240 hours.

OMB Number: 1545–0633.

Type of Review: Extension of a currently approved collection.

Title: Notices 437, 437–A, 438 and 466, Notice of Intention to Disclose.

Abstract: Notice is required by 26 U.S.C. 6110(f). A reply is necessary if the recipient disagrees with the Service's proposed deletions. The Service uses the reply to consider the propriety of making additional deletions to the public inspection version of written determinations or related background file documents.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,625 hours.

OMB Number: 1545–1464.

Type of Review: Extension of a currently approved collection.

Title: IA–44–94 (Final) Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

Abstract: The regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions of $75 or more. These regulations will affect donee organizations and individuals and entities that make payments to donee organizations.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,975,000 hours.

OMB Number: 1545–1628.

Type of Review: Extension of a currently approved collection.

Title: REG–118620–97 (Final) Communications Excise Tax; Prepaid Telephone Cards.

Abstract: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communication excise tax to prepaid telephone cards.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 34 hours.

OMB Number: 1545–1821.

Type of Review: Extension of a currently approved collection.

Title: REG–148867–03 (Final) Disclosure of Returns and Return Information in Connection with Written Contracts or Agreements for the Acquisition of Property and Services for Tax Administration.

Abstract: The regulations clarify that redisclosures of returns and return information by contractors to agents or subcontractors are permissible, and that the penalty provisions, written notification requirements, and safeguard requirements are applicable to these agents and subcontractors. Section 301.6103 (n)–1(d) of the proposed regulations require that contractors, agents, and subcontractors who receive returns or return information under the proposed regulations must provide written notice to their officers and employees of the purposes for which returns or return information may be used and of the potential civil and criminal penalties for unauthorized inspections or disclosures, including informing them of the imposition of punitive damages in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence. Section 301.6103(n)–1(e)(3) of the proposed regulations require that before the execution of a contract or agreement for the acquisition of property or services under which returns or return information will be disclosed, the contract or agreement must be made available to the IRS.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 250 hours.

OMB Number: 1545–2082.

Type of Review: Extension of a currently approved collection.

Title: Excise Tax Declaration for an IRS e-file Return.

Form: 8453–EX

Abstract: The Form 8453–EX, Excise Tax Declaration for an IRS e-file Return, will be used in the Modernized e-File program. This form is necessary to enable the electronic filing of Forms 720, 2290, and 8849. The authority to e-file Form 2290 is Internal Revenue Code section 4481(e), as added by section 867(c) of Public Law 108–357.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 42,600 hours.

OMB Number: 1545–1642.

Type of Review: Extension of a currently approved collection.

Title: REG–104072–97 (Final) Recharacterizing Financing Arrangements Involving Fast-Pay Stock.

Abstract: Section 1.7701(I)–3 recharacterizes fast-pay arrangements. Certain participants in such arrangements must file a statement that includes the name of the corporation that issued the fast-pay stock, and (to the extent the filing taxpayer knows or has reason to know) the terms of the fast-pay stock, the date on which it was issued, and the names and taxpayer identification numbers of any shareholders of any class of stock that is not traded on an established securities market.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 50 hours.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2011–4243 Filed 2–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 28, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1205.

Type of Review: Revision to a currently approved collection.

Title: Form 8826—Disabled Access Credit.

Form: 8826.

Abstract: Code section 44 allows eligible small businesses to claim a non-refundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 89,027 hours.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2011–4244 Filed 2–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2011.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 28, 2011 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0110.

Type of Review: Extension to a currently approved collection.

Title: Recordkeeping for Tobacco Products Removed in Bond from a Manufacturer's Premises for Experimental Purposes—27 CFR 40.232(e).

Abstract: The prescribed records apply to manufacturers who ship tobacco products in bond for experimental purposes. TTB can examine these records to determine that

the proprietor has complied with law and regulations that allow such tobacco products to be shipped in bond for experimental purposes without payment of the excise tax.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0058.

Type of Review: Extension to a currently approved collection.

Title: Usual and Customary Business Records Maintained by Brewers (TTB REC 5130/1).

Abstract: TTB audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax. TTB believes that these records would be normally kept in the course of doing business.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0025.

Type of Review: Extension to a currently approved collection.

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

Form: TTB F 5200.11

Abstract: The form documents the release of tobacco products and cigarette papers and tubes from Customs custody, and return of such articles, to a manufacturer or export warehouse proprietor for use in the United States. The form is also used to ensure compliance with laws and regulations at the time of these transactions and for post audit examinations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 536 hours.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005; (202) 453–2097.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina M. Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2011–4248 Filed 2–24–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of nine individuals and seven entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the nine individuals and seven entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on February 18, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On February 18, 2011, the Director of OFAC designated nine individuals and seven entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Entities:

1. AHMAD SHAH MONEY EXCHANGE (a.k.a. AHMAD SHAH HAKIMI MONEY EXCHANGE; a.k.a. HAKIMI MONEY EXCHANGE; a.k.a. SHAH HAKIMI MONEY EXCHANGE), Sarayee Shahzada, 1 floor, Shop No. 7, Kabul, Afghanistan; Surai Shahzada, Ground Floor, Shop No. 7, Kabul, Afghanistan; Sara-e-Shahzada Market, Shop No. 7, Kabul, Afghanistan; Trade License No. 101016 (Afghanistan) (entity) [SDNTK]
2. AL ADAL EXCHANGE, P.O. Box 56351, Dubai, United Arab Emirates; Nasr Square, Opposite Car Park Building, Shop No. 5, Dubai, United Arab Emirates; Naser Square, RPA Carpet Building, Shop No. 5, Deira, Dubai, United Arab Emirates; Al Souk Al Kbirr Street, Near Gargash Center, Deira, Dubai, United Arab Emirates; Dubai Chamber of Commerce Membership No. 172133 (United Arab Emirates) (entity) [SDNTK]
3. CONNECT TELECOM GENERAL TRADING LLC, Gargash Center, Shop No. 2, Dubai, United Arab Emirates; P.O. Box 63826, Dubai, United Arab Emirates; Al Owais Tower, 15th Floor, Office No. 1506, Creek Area, Near Twin Towers, Dubai, United Arab Emirates; Gargash Center, Shop No. 114, Dubai, United Arab Emirates; Dubai Chamber of Commerce Membership No. 123076 (United Arab Emirates) (entity) [SDNTK]
4. GREEN LEAF GENERAL TRADING LLC (f.k.a. GREEN LEAF TRADING LLC), Hamad Bin Ali Alowais Building, Al Suq Al Kabeer Street, Deira, Dubai, United Arab Emirates; Humaid Bin Ali Alowais Building, Al Suq Al Kabeer Street, Deira, Al Bateen, Dubai, United Arab Emirates; P.O. Box 56351, Dubai, United Arab Emirates; Gargash Center, Shop No. 114, Dubai, United Arab Emirates; Dubai Chamber of Commerce Membership No. 42988 (United Arab Emirates) (entity)

[SDNTK]
5. MUSHTAQ SHAHEEN CONSTRUCTION AND ROADMAKING COMPANY (a.k.a. MUSHTAQ SHAHEEN LTD), Surai Shahzada, Ground Floor, Shop No. 7, Surai Shahzada, Kabul, Afghanistan; Surai Shahzada, Shop No. 7, Ground Floor, Surai Shahzada, Kabul, Afghanistan; Room No. 7, Sarai Shahzada Mandawi, Kabul District No. 1, Afghanistan; Commercial Registry Number 31225 (Afghanistan) (entity) [SDNTK]
6. NEW ANSARI LTD, Helmand, Afghanistan; Shahri Naw Turah Baz Khan Street, Kabul, Afghanistan; Kandahar, Afghanistan; Farah, Afghanistan; Nimroz, Afghanistan; Urozgan, Afghanistan; Herat, Afghanistan; Badghis, Afghanistan; Mazar-i- Sharif, Afghanistan; Qundoz, Afghanistan; Jalalabad, Afghanistan; Ghanzi, Afghanistan; Ghazni, Afghanistan (entity) [SDNTK]
7. NEW ANSARI MONEY EXCHANGE (a.k.a. NAWI ANSARI LTD; a.k.a. NEW ANSARI COMPANY; a.k.a. NEW ANSARI MONEY SERVICES PROVIDER), Shahr-i-Naw, Kabul, Afghanistan; Shop No. 93, 1st Floor, Sarai Shahzada Market, Kabul, Afghanistan; Pul-i-Baghe Omomee, Shahzada Money Market, Kabul, Afghanistan; 2nd Floor, Soraj Nazeer Market, Shop No. 30- 301, Kabul, Afghanistan; 1st Street, Madat Intersection, Sharif Market, Kandahar, Afghanistan; Afghan United Bank Building, Hayratan, Afghanistan; Afghan United Bank Building, Hairatan, Afghanistan; Herat New City, Behzad Intersection, Next to 10th Intersection, Herat, Afghanistan; Jalalabad, Afghanistan; 30 Meters Street, Sharif, Nimroz, Afghanistan; Spin Boldak, Kandahar, Afghanistan; Dubai, United Arab Emirates; Tax ID No. 004800015 (Afghanistan) [SDNTK]

Individuals:

1. AZIMI, Haji Mohammad Rafi (a.k.a. AZIMI, Haji Muhammad Rafi; a.k.a. RAFI, Abdul); DOB 15 Feb 1972; POB Afghanistan; citizen Afghanistan; Passport OR131106 (Afghanistan) (individual) [SDNTK]
2. BARAKZAI ANSARI, Haji Abdullah (a.k.a. ANSARI, Haji Abdullah; a.k.a. BARAKZAI, Haji Abdullah), c/o NEW ANSARI MONEY EXCHANGE, Afghanistan; National ID No. 10331 (Afghanistan) (individual) [SDNTK]
3. HAJI ABDUL QAYOUM, Eissa Jan (a.k.a. HAJI ABDUL QAYOUM, Eisa Jan; a.k.a. HAJI ABDUL QAYOUM, Eisa Jon); DOB 13 Apr 1986; alt. DOB 13 Nov 1986; POB Kandahar, Afghanistan; citizen Afghanistan; Passport OR306785 (Afghanistan); alt. Passport OR022979 (Afghanistan) (individual) [SDNTK]
4. HAKIMI, Ahmad Shah, c/o AHMAD SHAH MONEY EXCHANGE, Afghanistan; c/o MUSHTAQ SHAHEEN CONSTRUCTION AND ROAD MAKING COMPANY, Afghanistan; DOB 1971; Passport OA547045 (Afghanistan); alt. Passport TR039938 (Afghanistan) (individual) [SDNTK]
5. JAN, Haji Mohammad (a.k.a. BIN KUL MOHAMMED, Mohammad Jan), c/o GREEN LEAF GENERAL TRADING LLC, Dubai, United Arab Emirates; c/o CONNECT TELECOM GENERAL TRADING LLC, Dubai, United Arab Emirates; DOB 7 Oct 1969; alt. DOB 1968; POB Kandahar, Afghanistan; citizen Afghanistan; National ID No. 1090876 (Afghanistan) (individual) [SDNTK]
6. KHAN, Haji Mohammad, c/o NEW ANSARI MONEY EXCHANGE, Afghanistan; DOB 1980; POB Kandahar, Afghanistan; citizen Afghanistan; National ID No. 242606 (Afghanistan); Passport TR040526 (Afghanistan) (individual) [SDNTK]
7. MOHAMMAD AFZAL, Rahmatullah; DOB 1 Jan 1982; POB Kabul, Afghanistan; citizen Afghanistan; Passport OR305655 (Afghanistan); alt. Passport OR488406 (Afghanistan); alt. Passport OR844806 (Afghanistan)(individual) [SDNTK]
8. NOOR, Haji Mohammad (a.k.a. MOHAMED KOL, Mohammed Noor; a.k.a. MOHAMMED KUL, Mohammed Nour), c/o GREEN LEAF GENERAL TRADING LLC, United Arab Emirates; c/o CONNECT TELECOM GENERAL TRADING LLC, United Arab Emirates; c/o NEW ANSARI MONEY EXCHANGE, Afghanistan; DOB 27 Jul 1965; citizen Afghanistan (individual) [SDNTK]
9. NOORULLAH, Haji, c/o NEW ANSARI MONEY EXCHANGE, Afghanistan; DOB 16 Apr 1970; alt. DOB 1969; POB City District 1, Kandahar, Afghanistan; citizen Afghanistan; National ID No. 1092488 (Afghanistan); alt. National ID No. 192488 (Afghanistan); Passport TR–030067 (Afghanistan) (individual) [SDNTK]

Dated: February 18, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2011–4192 Filed 2–24–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8896

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8896, Low Sulfur Diesel Fuel Production Credit.

DATES: Written comments should be received on or before April 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the form and instructions should be directed to Joel Goldberger, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low Sulfur Diesel Fuel Production Credit.

OMB Number: 1545–1914.

Form Number: 8896.

Abstract: IRC section 45H allows small business refiners to claim a credit for the production of low sulfur diesel fuel. The American Jobs Creation Act of 2004 section 399 brought it into existence. Form 8896 will allow taxpayers to use a standardized format to claim this credit.

Current Actions: There are no changes being made to this form.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 66.

Estimated Total Annual Burden Hours: 313

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: February 14, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–4195 Filed 2–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–CF

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–CF, Certain Fuel Products Report.

DATES: Written comments should be received on or before April 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Fuel Products Report.

OMB Number: 1545–XXXX.

Form Number: Form 720–CF.

Abstract: Internal Revenue Code § 4101 requires information reporting by (1) any person registered under IRC § 4101 rules with respect to fuel excise taxes, and (2) any other persons that IRS deems necessary to administer the applicable fuel taxes. The American Jobs Creation Act of 2004 created Volumetric Ethanol Excise Tax Credit (VEETC), a policy to subsidize the production of ethanol in the United States. Currently producers, resellers, blenders and importers have no reporting requirements other than to apply for the 637 registration and claim the Biodiesel and Renewable Diesel Fuels Credits ranging from .50 to 1.00 credit per each gallon sold or used. This new form will provide the Internal Revenue Service the information it needs to properly track the movement of fuel between these entities and the terminal operators and carrier operators that are currently filing forms 720–TO/CS.

Current Actions: This form is being submitted for new OMB approval.

Type of Review: New collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 39,240.

Estimated Time Per Respondent: 13 hours 13 minutes.

Estimated Total Annual Burden Hours: 518,361.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: February 15, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–4199 Filed 2–24–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Friday,
No. 38 February 25, 2011

Part II

Federal Deposit Insurance Corporation

12 CFR Part 327
Assessments, Large Bank Pricing; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD66

Assessments, Large Bank Pricing

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations to implement revisions to the Federal Deposit Insurance Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") by modifying the definition of an institution's deposit insurance assessment base; to change the assessment rate adjustments; to revise the deposit insurance assessment rate schedules in light of the new assessment base and altered adjustments; to implement Dodd-Frank's dividend provisions; to revise the large insured depository institution assessment system to better differentiate for risk and better take into account losses from large institution failures that the FDIC may incur; and to make technical and other changes to the FDIC's assessment rules.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967, Rose Kushmeider, Senior Economist, Division of Insurance and Research, (202) 898–3861; Heather Etner, Financial Analyst, Division of Insurance and Research, (202) 898–6796; Lisa Ryu, Chief, Large Bank Pricing Section, Division of Insurance and Research, (202) 898–3538; Christine Bradley, Senior Policy Analyst, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8951; Brenda Bruno, Senior Financial Analyst, Division of Insurance and Research, (630) 241–0359 x 8312; Robert L. Burns, Chief, Exam Support and Analysis, Division of Supervision and Consumer Protection (704) 333–3132 x 4215; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; and Sheikha Kapoor, Counsel, Legal Division, (202) 898–3960, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Dates

Except as specifically provided, the final rule will take effect for the quarter beginning April 1, 2011, and will be reflected in the June 30, 2011, fund balance and the invoices for assessments due September 30, 2011.

II. Background

A. Current Deposit Insurance Assessments

At present, for deposit insurance assessment purposes, an insured depository institution is placed into one of four risk categories each quarter, determined primarily by the institution's capital levels and supervisory evaluation. Current annual initial base assessment rates are set forth in Table 1 below.

TABLE 1—CURRENT INITIAL BASE ASSESSMENT RATES [1] RISK CATEGORY

	I *		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	12	16	22	32	45

* Rates for institutions that do not pay the minimum or maximum rate will vary between these rates.

Within Risk Category I, initial base assessment rates vary between 12 and 16 basis points. For all institutions in Risk Category I, rates depend upon weighted average CAMELS component ratings and certain financial ratios. For a large institution (generally, one with at least $10 billion in assets) that has debt issuer ratings, rates also depend upon these ratings.

Initial base assessment rates are subject to adjustment. An insured depository institution's total base assessment rate can vary from its initial base assessment rate as the result of an unsecured debt adjustment and a secured liability adjustment. The unsecured debt adjustment lowers an insured depository institution's initial base assessment rate using its ratio of long-term unsecured debt (and, for small insured depository institutions, certain amounts of Tier 1 capital) to domestic deposits.[2] The secured liability adjustment increases an insured depository institution's initial base assessment rate if the insured depository institution's ratio of secured liabilities to domestic deposits is greater than 25 percent.[3] In addition, insured depository institutions in Risk Categories II, III and IV are subject to an adjustment for large levels of brokered deposits (the brokered deposit adjustment).[4]

After applying all possible adjustments, the current minimum and maximum total annual base assessment rates for each risk category are set out in Table 2 below.

[1] Within Risk Category I, there are different assessment systems for large and small insured depository institutions, but the possible range of rates is the same for all insured depository institutions in Risk Category I.

[2] Unsecured debt excludes debt guaranteed by the FDIC under its Temporary Liquidity Guarantee Program.

[3] The initial base assessment rate cannot increase more than 50 percent as a result of the secured liability adjustment.

[4] 12 CFR 327.9(d)(7).

Table 2

Initial and Total Base Assessment Rates

	Risk Category I	Risk Category II	Risk Category III	Risk Category IV
Initial base assessment rate……	**12–16**	**22**	**32**	**45**
Unsecured debt adjustment……..	**(5)–0**	**(5)–0**	**(5)–0**	**(5)–0**
Secured liability adjustment…….	**0–8**	**0–11**	**0–16**	**0–22.5**
Brokered deposit adjustment……	**…....**	**0–10**	**0–10**	**0–10**
TOTAL BASE ASSESSMENT RATE	**7–24**	**17–43**	**27–58**	**40–77.5**

All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

The FDIC may uniformly adjust the total base rate assessment schedule up or down by up to 3 basis points without further rulemaking.[5]

An institution's assessment is determined by multiplying its assessment rate by its assessment base. Its assessment base is, and has historically been, domestic deposits, with some adjustments. (These adjustments have changed over the years.)

B. The Dodd-Frank Wall Street Reform and Consumer Protection Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted in July 2010, revised the statutory authorities governing the FDIC's management of the Deposit Insurance Fund (the DIF or the fund). Dodd-Frank granted the FDIC the ability to achieve goals for fund management that it has sought to achieve for decades but lacked the tools to accomplish: maintaining a positive fund balance even during a banking crisis and maintaining moderate, steady assessment rates throughout economic and credit cycles.

Among other things, Dodd-Frank: (1) Raised the minimum designated reserve ratio (DRR), which the FDIC must set each year, to 1.35 percent (from the former minimum of 1.15 percent) and removed the upper limit on the DRR (which was formerly capped at 1.5 percent) and therefore on the size of the fund;[6] (2) required that the fund reserve ratio reach 1.35 percent by September 30, 2020 (rather than 1.15 percent by the end of 2016, as formerly required);[7] (3) required that, in setting assessments, the FDIC "offset the effect of [requiring that the reserve ratio reach 1.35 percent by September 30, 2020 rather than 1.15 percent by the end of 2016] on insured depository institutions with total consolidated assets of less than $10,000,000,000";[8] (4) eliminated the requirement that the FDIC provide dividends from the fund when the reserve ratio is between 1.35 percent and 1.5 percent;[9] and (5) continued the FDIC's authority to declare dividends when the reserve ratio at the end of a calendar year is at least 1.5 percent, but granted the FDIC sole discretion in determining whether to suspend or limit

[5] Specifically:

The Board may increase or decrease the total base assessment rate schedule up to a maximum increase of 3 basis points or a fraction thereof or a maximum decrease of 3 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the total base assessment rate schedule. In no case may such Board rate adjustments result in a total base assessment rate that is mathematically less than zero or in a total base assessment rate schedule that, at any time, is more than 3 basis points above or below the total base assessment schedule for the Deposit Insurance Fund, nor may any one such Board adjustment constitute an increase or decrease of more than 3 basis points.

12 CFR 327.10(c). On October 19, 2010, the FDIC adopted a new Restoration Plan that foregoes a uniform 3 basis point increase in assessment rates scheduled to go into effect on January 1, 2011. Thus, the assessment rates in this final rule reflect that change.

[6] Public Law 111–203, § 334(a), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(b)(3)(B)).

[7] Public Law 111–203, § 334(d), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(nt)).

[8] Public Law 111–203, § 334(e), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(nt)).

[9] Public Law 111–203, § 332(d), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(e)).

the declaration or payment of dividends.[10]

Dodd-Frank also required that the FDIC amend its regulations to redefine the assessment base used for calculating deposit insurance assessments. Under Dodd-Frank, the assessment base must, with some possible exceptions, equal average consolidated total assets minus average tangible equity.[11]

C. Notice of Proposed Rulemaking on Assessment Dividends, Assessment Rates and the Designated Reserve Ratio

Given the greater discretion to manage the DIF granted by Dodd-Frank, the FDIC developed a comprehensive, long-range management plan for the DIF. In October 2010, the FDIC adopted a Notice of Proposed Rulemaking on Assessment Dividends, Assessment Rates and the Designated Reserve Ratio (the October NPR) setting out the plan, which is designed to: (1) Reduce the pro-cyclicality in the existing risk-based assessment system by allowing moderate, steady assessment rates throughout economic and credit cycles; and (2) maintain a positive fund balance even during a banking crisis by setting an appropriate target fund size and a strategy for assessment rates and dividends.[12]

In developing the comprehensive plan, the FDIC analyzed historical fund losses and used simulated income data from 1950 to the present to determine how high the reserve ratio would have to have been before the onset of the two banking crises that occurred during this period to maintain a positive fund balance and stable assessment rates. Based on this analysis and the statutory factors that the FDIC must consider when setting the DRR, the FDIC proposed setting the DRR at 2 percent. The FDIC also proposed that a moderate assessment rate schedule, based on the long-term average rate needed to maintain a positive fund balance, take effect when the fund reserve ratio exceeds 1.15 percent.[13] This schedule would be lower than the current schedule. Finally, the FDIC proposed suspending dividends when the fund reserve ratio exceeds 1.5 percent.[14] In lieu of dividends, the FDIC proposed to adopt progressively lower assessment rate schedules when the reserve ratio exceeds 2 percent and 2.5 percent.

D. Final Rule Setting the Designated Reserve Ratio

In December 2010, the FDIC adopted a final rule setting the DRR at 2 percent (the DRR final rule), but deferred action on the other subjects of the October NPR (dividends and assessment rates) until this final rule. The FDIC's decision to set the DRR at 2 percent was based partly on additional historical analysis, which is described below.

E. Notice of Proposed Rulemaking on the Assessment Base, Assessment Rate Adjustments and Assessment Rates

In a notice of proposed rulemaking adopted by the FDIC Board on November 9, 2010 (the Assessment Base NPR), the FDIC proposed to amend the definition of an institution's deposit insurance assessment base consistent with the requirements of Dodd-Frank, modify the unsecured debt adjustment and the brokered deposit adjustment in light of the changes to the assessment base, add an adjustment for long-term debt held by an insured depository institution where the debt is issued by another insured depository institution, and eliminate the secured liability adjustment. The Assessment Base NPR also proposed revising the current deposit insurance assessment rate schedule in light of the larger assessment base required by Dodd-Frank and the revised adjustments. The FDIC's goal was to determine a rate schedule that would have generated approximately the same revenue as that generated under the current rate schedule in the second quarter of 2010 under the current assessment base. The Assessment Base NPR also proposed revisions to the rate schedules proposed in the October NPR, in light of the changes to the assessment base and the adjustments. These revised rate schedules were also intended to generate the same revenue as the corresponding rates in the October NPR.

F. Notices of Proposed Rulemaking on the Assessment System Applicable to Large Insured Depository Institutions

In April 2010, the FDIC adopted a notice of proposed rulemaking with request for comment to revise the risk-based assessment system for all large insured depository institutions to better capture risk at the time large institutions assume the risk, to better differentiate among institutions for risk and take a more forward-looking view of risk, to better take into account the losses that the FDIC may incur if such an insured depository institution fails, and to make technical and other changes to the rules governing the risk-based assessment system (the April NPR).[15]

Largely as a result of changes made by Dodd-Frank and the Assessment Base NPR, the FDIC reissued its proposal applicable to large insured depository institutions for comment on November 9, 2010 (the Large Bank NPR), taking into account comments received on the April NPR.

In the Large Bank NPR, the FDIC proposed eliminating risk categories and the use of long-term debt issuer ratings for large institutions, using a scorecard method to calculate assessment rates for large and highly complex institutions, and retaining the ability to make a limited adjustment after considering information not included in the scorecard. In the Large Bank NPR, the FDIC stated that it would not make adjustments until the guidelines for making such adjustments are published for comment and subsequently adopted by the FDIC Board.

G. Update of Historical Analysis of Loss, Income and Reserve Ratios

The analysis set out in the October NPR to determine how high the reserve ratio would have had to have been to have maintained both a positive fund

[10] Public Law 111–203, § 332, 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(e)(2)(B)).

[11] Public Law 111–203, § 331(b), 124 Stat. 1376, 1538 (to be codified at 12 U.S.C. 1817(nt)).

[12] 75 FR 66262 (Oct. 27, 2010). Pursuant to the comprehensive plan, the FDIC also adopted a new Restoration Plan to ensure that the DIF reserve ratio reaches 1.35 percent by September 30, 2020, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. 75 FR 66293 (Oct. 27, 2010).

[13] Under section 7 of the Federal Deposit Insurance Act, the FDIC has authority to set assessments in such amounts as it determines to be necessary or appropriate. In setting assessments, the FDIC must consider certain enumerated factors, including the operating expenses of the DIF, the estimated case resolution expenses and income of the DIF, and the projected effects of assessments on the capital and earnings of insured depository institutions.

[14] 12 U.S.C. 1817(e)(2), as amended by § 332 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

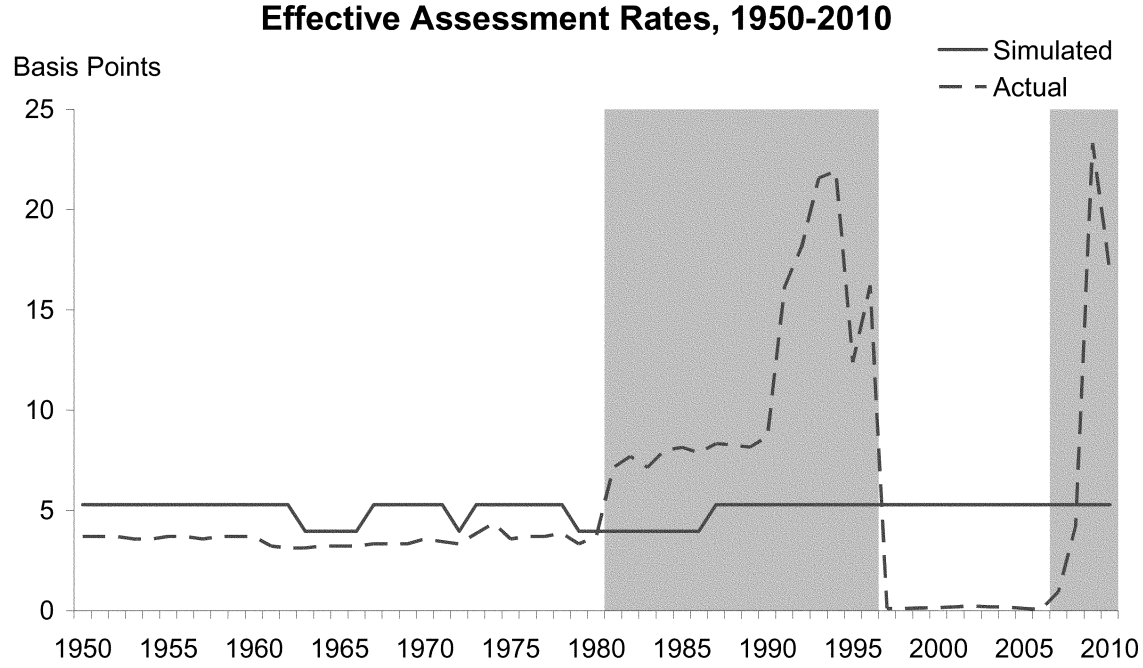
[15] The preamble to the Large Bank NPR incorrectly summarized the definition of a "large institution"; however, the definition was correct in the proposed regulation. The final rule, like the proposed regulation, defines a large institution as an insured depository institution: (1) That had assets of $10 billion or more as of December 31, 2006 (unless, by reporting assets of less than $10 billion for four consecutive quarters since then, it has become a small institution); or (2) that had assets of less than $10 billion as of December 31, 2006, but has since had $10 billion or more in total assets for at least four consecutive quarters, whether or not the institution is new. In almost all cases, an insured depository institution that has had $10 billion or more in total assets for four consecutive quarters will have a CAMELS rating; however, in the rare event that such an institution has not yet received a CAMELS rating, it will be given a weighted average CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned. An insured branch of a foreign bank is excluded from the definition of a large institution.

balance and stable assessment rates from 1950 through 2010 assumed assessment rates based upon an assessment base related to domestic deposits rather than the assessment base required by Dodd-Frank (average consolidated total assets minus average tangible equity).[16] The FDIC undertook additional analysis (described in the DRR final rule and repeated here) to determine how the results of the original analysis would change had the new assessment base been in place from 1950 to 2010. Due to the larger assessment base resulting from Dodd-Frank, the constant nominal assessment rate required to maintain a positive fund balance from 1950 to 2010 would have been 5.29 basis points (compared with 8.47 basis points using a domestic-deposit-related assessment base). (See Chart 1.)

The assessment base resulting from Dodd-Frank, had it been applied to prior years, would have been larger than the domestic-deposit-related assessment base, and the rates of growth of the two assessment bases would have differed both over time and from each other. At any given time, therefore, applying a constant nominal rate of 8.47 basis points to the domestic-deposit-related assessment base would not necessarily have yielded exactly the same revenue as applying 5.29 basis points to the Dodd-Frank assessment base.

Despite these differences, the new analysis applying a 5.29 basis point assessment rate to the Dodd-Frank assessment base resulted in peak reserve ratios prior to the two crises similar to those seen when applying an 8.47 basis point assessment rate to a domestic-deposit-related assessment base.[17] (See Chart 2.) Both analyses show that the fund reserve ratio would have needed to be approximately 2 percent or more before the onset of the 1980s and 2008 crises to maintain both a positive fund balance and stable assessment rates, assuming, in lieu of dividends, that the long-term industry average nominal assessment rate would have been reduced by 25 percent when the reserve ratio reached 2 percent, and by 50 percent when the reserve ratio reached 2.5 percent.[18] Eliminating dividends and reducing rates would have successfully limited rate volatility, whichever assessment base was used.

Chart 1



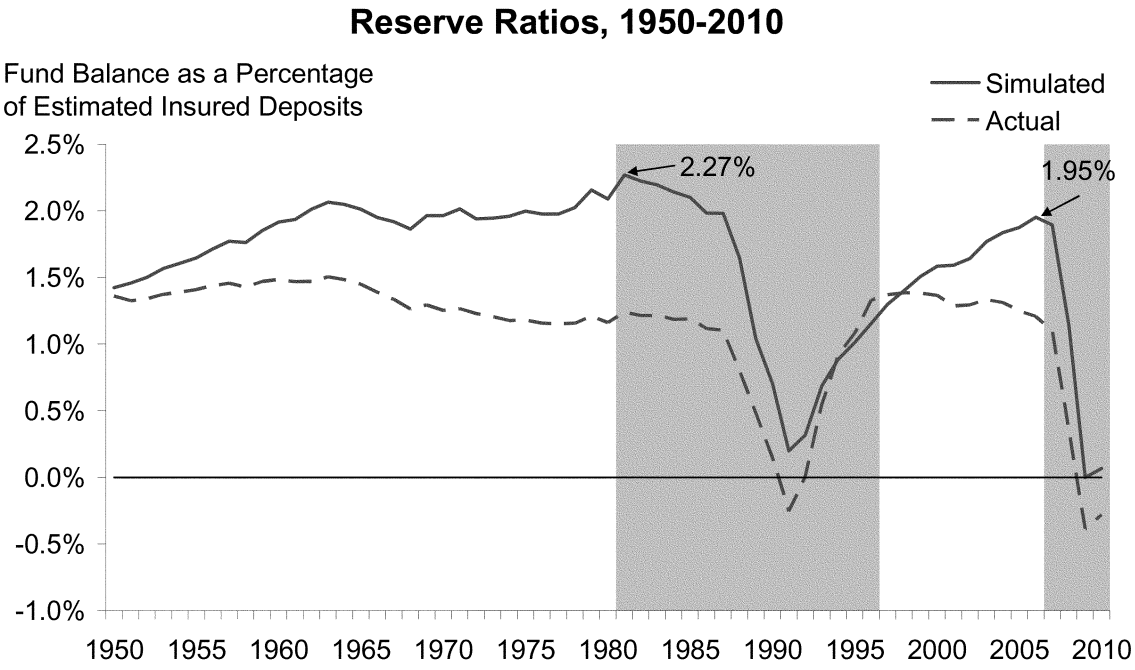
Source: FDIC, data through June 30, 2010.
Note: Effective assessment rate reduced by 25 percent when reserve ratio reaches 2 percent and 50 percent when reserve ratio reaches 2.5 percent, with 5.29 basis point average nominal assessment rate using new assessment base. Shaded areas denote periods of crisis and associated high assessment rates.

[16] The historical analysis contained in the October NPR is incorporated herein by reference.

[17] Using the domestic-deposit-related assessment base, reserve ratios would have peaked at 2.31 percent and 2.01 percent before the two crises. (*See* Chart G in the October NPR.) Using the Dodd-Frank assessment base, reserve ratios would have peaked at 2.27 percent and 1.95 percent before the two crises.

[18] Dodd-Frank provides that the assessment base be changed to average consolidated total assets minus average tangible equity. *See* Public Law 111–203, § 331(b). For this simulation, from 1990 to 2010, the assessment base equals year-end total industry assets minus Tier 1 capital. For earlier years (before the Tier 1 capital measure existed) it equals year-end total industry assets minus total equity. Other than as noted, the methodology used in the additional analysis was the same as that used in the October NPR.

Chart 2



Source: FDIC, data through June 30, 2010.
Note: Effective assessment rate reduced by 25 percent when reserve ratio reaches 2 percent and 50 percent when reserve ratio reaches 2.5 percent, with 5.29 basis point average nominal assessment rate using new assessment base. Shaded areas denote periods of crisis and associated high assessment rates.

H. Scope of the Final Rule

This final rule encompasses all of the proposals contained in the October NPR, the Assessment Base NPR and the Large Bank NPR, except the proposal setting the DRR, which was covered in the DRR final rule.

I. Structure of the Next Sections of the Preamble

The next sections of this preamble are structured as follows:

- Section II briefly discusses the number of comments received;
- Section III discusses the portion of the final rule related to changes to the assessment base and adjustments to assessment rates proposed in the Assessment Base NPR;
- Subsection IV discusses the portion of the final rule related to dividends and assessment rates proposed in the Assessment Base NPR and the October NPR; and
- Subsection V discusses the portion of the final rule related to the assessment system applicable to large insured depository institutions proposed in the Large Bank NPR.

III. Comments Received

The FDIC sought comments on every aspect of the proposed rules. The FDIC received a total of 55 written comments on the October NPR, the Assessment Base NPR and the Large Bank NPR, although some were duplicative. Comments are discussed in the relevant sections below.

IV. The Final Rule: The Assessment Base and Adjustments to Assessment Rates

A. Assessment Base

As stated above, Dodd-Frank requires that the FDIC amend its regulations to redefine the assessment base used for calculating deposit insurance assessments. Specifically, Dodd-Frank directs the FDIC:

> To define the term "assessment base" with respect to an insured depository institution * * * as an amount equal to—
>
> (1) the average consolidated total assets of the insured depository institution during the assessment period; minus
>
> (2) the sum of—
>
> (A) the average tangible equity of the insured depository institution during the assessment period, and
>
> (B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in * * * (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank.[19]

To implement this requirement, the FDIC, in this final rule, defines "average consolidated total assets," "average tangible equity," and "tangible equity," and sets forth the basis for reporting consolidated total assets and tangible equity.

To establish assessments consistent with the definition of the "risk-based assessment system" under the Federal Deposit Insurance Act (the FDI Act), Dodd-Frank also requires the FDIC to determine whether and to what extent adjustments to the assessment base are appropriate for banker's banks and custodial banks. The final rule outlines these adjustments and provides a definition of "custodial bank."

1. Average Consolidated Total Assets

The final rule, like the proposed rule, requires that all insured depository institutions report their average consolidated total assets using the accounting methodology established for reporting total assets as applied to Line 9 of Schedule RC–K of the Consolidated

[19] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 331(b), 124 Stat. 1376, 1538 (codified at 12 U.S.C. 1817(nt)).

Reports of Condition and Income (Call Report) (that is, the methodology established by Schedule RC–K regarding when to use amortized cost, historical cost, or fair value, and how to treat deferred tax effects). The final rule differs from the proposed rule, however, by allowing certain institutions to report average consolidated total assets on a weekly, rather than daily, basis. The final rule requires institutions with total assets greater than or equal to $1 billion and all institutions that are newly insured after March 31, 2011, to average their balances as of the close of business for each day during the calendar quarter. Institutions with less than $1 billion in quarter-end consolidated total assets on their March 31, 2011 Call Report or Thrift Financial Report (TFR) may report an average of the balances as of the close of business on each Wednesday during the calendar quarter or may, at any time, permanently opt to calculate average consolidated total assets on a daily basis. Once an institution that reports average consolidated total assets using a weekly average reports average consolidated total assets of $1 billion or more for two consecutive quarters, it shall permanently report average consolidated total assets using daily averaging starting in the next quarter.

While some commenters supported the requirement that all institutions average their assets using daily balances, one trade group requested that all institutions be allowed to choose between daily and weekly averages. In the FDIC's view, institutions with at least $1 billion in assets should be able to compute averages using daily balances. (Many already do so.) However, to avoid imposing transition costs on smaller institutions (those with less than $1 billion in assets), the final rule allows these institutions to calculate an average of Wednesday asset balances, unless they opt permanently to report daily averages.[20] Newly insured institutions incur no transition costs (since they have no existing systems) and, thus, must average using daily balances.

Under the final rule, an institution's daily average consolidated total assets equal the sum of the gross amount of consolidated total assets for each calendar day during the quarter divided by the number of calendar days in the quarter. An institution's weekly average consolidated total assets equal the sum of the gross amount of consolidated total assets for each Wednesday during the quarter divided by the number of Wednesdays in the quarter. For days that an office of the reporting institution (or any of its subsidiaries or branches) is closed (*e.g.,* Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day will be used. An office is considered closed if there are no transactions posted to the general ledger as of that date.

In the case of a merger or consolidation, the calculation of the average assets of the surviving or resulting institution must include the assets of all the merged or consolidated institutions for the days in the quarter prior to the merger or consolidation, regardless of the method used to account for the merger or consolidation.

In the case of an insured depository institution that is the parent company of other insured depository institutions, the final rule, like the proposed rule, requires that the parent insured depository institution report its daily or weekly, average consolidated total assets without consolidating its insured depository institution subsidiaries into the calculations.[21] Because of intercompany transactions, a simple subtraction of the subsidiary insured depository institutions' assets and equity from the parent insured depository institution's assets and equity will not usually result in an accurate statement of the parent insured depository institution's assets and equity. This treatment is consistent with current assessment base practice and ensures that all parent insured depository institutions are assessed only for their own assessment base and not that of their subsidiary insured depository institutions, which will be assessed separately.

For all other subsidiaries, assets, including those eliminated in consolidation, will also be calculated using a daily or weekly averaging method, corresponding to the daily or weekly averaging requirement of the parent institution. The final rule clarifies that Call Report instructions in effect for the quarter being reported will govern calculation of the average amount of subsidiaries' assets, including those eliminated in consolidation. Current Call Report instructions state that the calculation should be for the same quarter as the assets reported by the parent institution to the extent practicable, but in no case differ by more than one quarter. However, under the final rule, once an institution reports the average amount of subsidiaries' assets, including those eliminated in consolidation, using concurrent data, the institution must do so for all subsequent quarters.

Finally, for insured branches of foreign banks, as in the proposed rule, average consolidated total assets are defined as total assets of the branch (including net due from related depository institutions) in accordance with the schedule of assets and liabilities in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, but using the accounting methodology for reporting total assets established in Schedule RC–K of the Call Report, and calculated using the appropriate daily or weekly averaging method as described above.

In choosing to require all but smaller insured institutions to report "average consolidated total assets" using daily averaging, the FDIC sought to develop a measure that would be a truer reflection of the assessment base during the entire quarter.[22] By using a methodology already established in the Call Report, the FDIC believes the reporting requirements for the new assessment base will be minimized. Finally, by using the Call Report methodology for reporting average consolidated total assets, all institutions will report average consolidated total assets consistently.

2. Comments

Commenters favored the use of an existing measure for average consolidated total assets because it will minimize the burden of the rulemaking on institutions.

A few commenters suggested that the FDIC deduct goodwill and intangibles from average consolidated total assets. According to one commenter, a loss in value or write-off of goodwill (unlike other assets) poses no additional risk of loss to the FDIC in the event of a failure of an insured institution; goodwill is not an asset for which the FDIC as receiver could have any expectation of recovery. Moreover, failing to deduct goodwill could lead to anomalous results—two institutions that merge and create goodwill would have a combined assessment base greater than the sum of the two assessment bases separately. The FDIC is not persuaded by these

[20] Institutions currently may report a daily average or an average of Wednesday assets on Call Report Schedule RC–K.

[21] The amount of the institution's average consolidated total assets without consolidating its insured depository institution subsidiaries determines whether the institution may report a weekly average.

[22] In this way, the daily averaging requirement is consistent with the actions taken by the FDIC in 2006 when it determined that using quarter-end deposit data as a proxy for balances over an entire quarter did not accurately reflect an insured depository institution's typical deposit level. As a result, the FDIC required certain institutions to report a daily average deposit assessment base.

arguments. Dodd-Frank specifically states that the assessment base should be "average consolidated total assets minus average tangible equity." Subtracting intangibles from assets as well as equity negates the purposeful use of the word "tangible" in the definition of the new assessment base and, in the FDIC's view, is counter to the intent of Congress.

A number of commenters stated that the FDIC should exclude transactions between affiliated banks from the assessment base to avoid double counting the assets associated with these transactions in the assessment base. Commenters acknowledge that the FDIC currently assesses deposits received from affiliated banks, but believe that, with the requirement to change the assessment base, the FDIC should now exclude transactions between affiliated banks. The FDIC has generally assessed risk at the insured institution level and is not persuaded to change this practice.

3. Tangible Equity

The final rule, like the proposed rule, uses Tier 1 capital as the definition of tangible equity. Although this measure does not eliminate all intangibles, it eliminates many of them, and it requires no additional reporting by insured depository institutions. The FDIC may reconsider the definition of tangible equity once new Basel capital definitions have been implemented.

The final rule, like the proposed rule, defines the averaging period for tangible equity to be monthly; however, institutions that report less than $1 billion in quarter-end consolidated total assets on their March 31, 2011 Call Report or TFR may report average tangible equity using an end-of-quarter balance or may, at any time, opt to report average tangible equity using a monthly average balance permanently. Once an institution that reports average tangible equity using an end-of-quarter balance reports average consolidated total assets of $1 billion or more for two consecutive quarters, it shall permanently report average tangible equity using monthly averaging starting in the next quarter. Newly insured institutions must report monthly averages. Monthly averaging means the average of the three month-end balances within the quarter. For the surviving institution in a merger or consolidation, Tier 1 capital must be calculated as if the merger occurred on the first day of the quarter in which the merger or consolidation actually occurred.

Under the final rule, as in the proposed rule, an insured depository institution with one or more consolidated insured depository institution subsidiaries must report average tangible equity (or end-of-quarter tangible equity, as appropriate) without consolidating its insured depository institution subsidiaries into the calculations. This requirement conforms to the method for reporting consolidated total assets above and ensures that all parent insured depository institutions will be assessed only on their own assessment base and not that of their subsidiary insured depository institutions.

As in the proposed rule, an insured depository institution that reports average tangible equity using a monthly averaging method and that has subsidiaries that are not insured depository institutions must use monthly average data for the subsidiaries. The monthly average data for these subsidiaries, however, may be calculated for the current quarter or for the prior quarter consistent with the method used to report average consolidated total assets.

As in the proposed rule, for insured branches of foreign banks, tangible equity is defined as eligible assets (determined in accordance with Section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries). This value is to be calculated on a monthly average or end-of-quarter basis, according to the branch's size.

The FDIC does not foresee a need for any institution to report daily average balances for tangible equity, since the components of tangible equity appear to be subject to less fluctuation than are consolidated total assets. Thus, the definition of average tangible equity in the final rule achieves a true reflection of tangible equity over the entire quarter by requiring monthly averaging of capital for institutions that account for the majority of industry assets and end-of-quarter balances for all other institutions.

Defining tangible equity as Tier 1 capital provides a clearly understood capital buffer for the DIF in the event of the institution's failure, while avoiding an increase in regulatory burden that a new definition of capital could cause.[23] This methodology should not increase regulatory burden, since institutions with assets of $1 billion or more generally compute their regulatory capital ratios no less frequently than monthly. To minimize regulatory burden for small institutions, the proposal allows these institutions to report an end-of-quarter balance.

4. Comments

A number of commenters explicitly supported the use of Tier 1 capital for average tangible equity because this would minimize the burden of the rulemaking on institutions. One trade group asked that institutions with less than $10 billion in assets (as opposed to less than $1 billion) be allowed to report end-of-quarter balances rather than an average of month-end balances on the grounds that these institutions experience few fluctuations in capital and allowing them to report end-of-quarter balances would reduce burden. The FDIC believes that many institutions of this size already determine their capital more frequently than once a quarter, so that the requested change is not needed.

5. Banker's Bank Adjustment

Like the proposed rule, the final rule will require a banker's bank to certify on its Call Report or TFR that it meets the definition of "banker's bank" as that term is used in 12 U.S.C. 24. The self-certification will be subject to verification by the FDIC. The final rule, however, clarifies that banker's banks that have funds from government capital infusion programs (such as TARP and the Small Business Lending Fund), stock owned by the FDIC resulting from bank failures or stock that is issued as part of an equity compensation program will not be excluded from the definition of banker's bank solely for these reasons.[24] As in the proposed rule, for an institution that meets the definition (with the exception noted below), the FDIC will exclude from its assessment base the average amount of reserve balances "passed through" to the Federal Reserve, the average amount of reserve balances held at the Federal Reserve for the institution's own account, and the average amount of the institution's federal funds sold. (In each case, the average is to be calculated daily or weekly depending on how the

[23] The changes needed to implement the new assessment base will require the FDIC to collect some information from insured depository institutions that is not currently collected on the Call Report or TFR. However, the burden of requiring new data will be partly offset by allowing some assessment data that are currently collected to be deleted from the Call Report or TFR.

[24] Some commenters had asked that the FDIC use the definition of banker's bank contained in 12 U.S.C. 461(b)(9) (which is repeated verbatim in the implementing regulation, 12 CFR 204.121) in lieu of 12 U.S.C. 24. The definition of banker's bank in the final rule adheres to the requirement in Dodd-Frank that the potential assessment base reduction apply to banker's banks "as that term is used in * * * 12 U.S.C. 24." However, in the FDIC's view, the clarification in the preamble should meet the concerns of these commenters.

institution calculates its average consolidated total assets.) The collective amount of this exclusion, however, cannot exceed the sum of the bank's average amount of total deposits of commercial banks and other depository institutions in the United States and the average amount of its federal funds purchased. (Again, in each case, the average is to be calculated daily or weekly depending on how the institution calculates its average consolidated total assets.) Thus, for example, if a banker's bank has a total average balance of $300 million of federal funds sold plus reserve balances (including pass-through reserve balances), and it has a total average balance of $200 million of deposits from commercial banks and other depository institutions and federal funds purchased, it can deduct $200 million from its assessment base. Federal funds purchased and sold on an agency basis will not be included in these calculations as they are not reported on the balance sheet of a banker's bank.

As in the proposed rule, the assessment base adjustment applicable to a banker's bank is only available to an institution that conducts less than 50 percent of its business with affiliates (as defined in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)) and section 2 of the Home Owners' Loan Act (12 U.S.C. 1462)). Providing a benefit to a banker's bank that primarily serves affiliated companies would undermine the intent of the benefit by providing a way for banking companies to reduce deposit insurance assessments simply by establishing a subsidiary for that purpose.

Currently, the corresponding deposit liabilities that result in "pass-through" reserve balances are excluded from the assessment base. The final rule, like the proposal, retains this exception for banker's banks.

A typical banker's bank provides liquidity and other services to its member banks that may result in higher than average amounts of federal funds purchased and deposits from other insured depository institutions and financial institutions on a banker's bank's balance sheet. To offset its relatively high levels of these short-term liabilities, a banker's bank often holds a relatively high amount of federal funds sold and reserve balances for its own account. The final rule, therefore, like the proposed rule, adjusts the assessment base of a banker's bank to reflect its greater need to maintain liquidity to service its member banks.

6. Comments

Several commenters addressed the issue of providing an adjustment to banker's banks. The most common comment among the respondents was a concern that the adjustment for federal funds sold may have unintended consequences for the federal funds market. The commenters argued that federal funds are generally sold on thin margins and that, if non-banker's banks pay even a few basis points of FDIC assessments on federal funds sold when banker's banks do not, the non-banker's banks will not be able to compete in this market. The comments further state that banker's banks alone cannot provide sufficient funding to maintain the federal funds market at its current size and that by providing a deduction from assets solely for banker's banks, the proposal could potentially lead to a considerable contraction of the federal funds market with detrimental implications for bank liquidity. The comments suggested that the FDIC provide a deduction for federal funds sold for all insured depository institutions or, alternatively, assign a zero premium weight to federal funds sold for all institutions.

The FDIC recognizes that, by allowing banker's banks to subtract federal funds sold from their assessment base, the cost of providing those funds for banker's banks will be reduced relative to other banks that are not afforded such a deduction. However, there is no uniform assessment rate for all banks, and since assessment rates will now be applied to an assessment base of average consolidated total assets, the cost—due to the assessment rate—of providing federal funds will potentially differ for every institution. While banker's banks may gain an incentive to sell more federal funds than they currently have and may gain a larger profit from doing so than would some other banks, it is not clear, a priori, what their total cost of funding will be, given that the assessment rate is only one factor in the cost of providing federal funds. Further, it is not likely that non-banker's banks will completely withdraw from providing federal funds as long as the market finds such funding more attractive than the alternatives.

Three commenters called for all excess reserve balances maintained by banker's banks to be included in the banker's bank deduction; some also called for the FDIC to allow a deduction for balances due from other banks. The FDIC clarifies that the proposed deduction for reserve balances held at the Federal Reserve would include all balances due from the Federal Reserve as reported on Schedule RC–A, line 4 of the Call Report. Balances due from other banks include assets that are relatively less liquid, such as time deposits. The FDIC does not believe it is appropriate to include these balances in the banker's bank deduction.

One banker's bank argues that banker's banks are subject to "double taxation" because every dollar on deposit has been received from another bank that is also being assessed a deposit insurance premium on its deposits. In the FDIC's view, there is no double assessment, since each institution is receiving the benefit of deposit insurance and is paying for it. This view is consistent with the treatment of interbank deposits under the current deposit insurance assessment system, which includes these deposits in an institution's assessment base.

Another bank argues that there is no reasonable basis to deny the banker's bank assessment base deduction to banker's banks that conduct business primarily with affiliated insured depository institutions. This bank also argues that the interaffiliate transactions that such a banker's bank engages in result in counting the same assets twice, once at the banker's bank and again at its affiliate, although overall risk is not increased because of cross-guarantees. The FDIC believes that, while such a bank may meet the technical definition of a banker's bank, it does not serve the same function as a true banker's bank. Moreover, as discussed above, the FDIC has generally assessed risk at the insured depository institution level (for example, it currently assesses separately on interaffiliate deposits) and is not persuaded to change this practice. The FDIC cannot invariably collect on cross-guarantees from affiliated institutions, since the guarantor may also be insolvent or could be made insolvent by fulfilling the guarantee.

7. Custodial Bank Definition

The final rule identifies custodial banks as insured depository institutions with previous calendar year-end trust assets (that is, fiduciary and custody and safekeeping assets, as reported on Schedule RC–T of the Call Report) of at least $50 billion or those insured depository institutions that derived more than 50 percent of their revenue (interest income plus non-interest income) from trust activity over the previous calendar year. Using this definition, the FDIC estimates that 62 insured depository institutions would have qualified as custodial banks for deposit insurance purposes using data as of December 31, 2009.

This definition differs from the definition in the Assessment Base NPR, in that it expands the definition to include fiduciary assets and revenue as well as custody and safekeeping assets and revenue. Commenters have convinced the FDIC that fiduciary accounts have a custodial component, which, in many cases, is the primary reason for the account. This change will mean that more institutions will qualify under the definition.

8. Custodial Bank Adjustment

The final rule states that the assessment base adjustment for custodial banks should be the daily or weekly average—in accordance with the way the bank reports its average consolidated total assets—of a certain amount of low-risk assets—designated as assets with a Basel risk weighting of 0 percent, regardless of maturity,[25] plus 50 percent of those assets with a Basel risk weighting of 20 percent, again regardless of maturity [26]—subject to the limitation that the daily or weekly average value of these assets cannot exceed the daily or weekly average value of those deposits classified as transaction accounts (as reported on Schedule RC–E of the Call Report) and identified by the institution as being directly linked to a fiduciary or custodial and safekeeping account.

The final rule differs from the Assessment Base NPR in that it allows the deduction of all 0 percent risk-weighed assets and 50 percent of 20 percent risk-weighted assets without regard to specific maturity (although the purpose of the 50 percent reduction in the 20 percent risk weighted assets is to apply a sufficient haircut to those assets to account for the risk posed by longer-term maturities). Again based upon comments, the FDIC has concluded that transaction accounts associated with fiduciary and custody and safekeeping assets generally display the characteristics of core deposits, justifying a relaxation of the maturity length requirement in the proposal.[27]

The final rule also differs from the proposed rule in two other ways. First, it allows a deduction up to the daily or weekly average value of those deposits classified as transaction accounts that are identified by the institution as being linked to a fiduciary or custodial and safekeeping account. The final rule includes fiduciary accounts, rather than just custodial and safekeeping accounts, for the reasons stated above. Second, the final rule limits the deduction to transaction accounts, rather than all deposit accounts, because deposits generated in the course of providing custodial services (regardless of whether there is a fiduciary aspect to the account) are used for payments and clearing purposes, as opposed to deposits held in non-transaction accounts, which may be part of a wealth management strategy.

B. Assessment Rate Adjustments

In February 2009, the FDIC adopted a final rule incorporating three adjustments into the risk-based pricing system.[28] These adjustments—the unsecured debt adjustment, the secured liability adjustment, and the brokered deposit adjustment—were added to better account for risk among insured depository institutions based on their funding sources. In light of the changes to the deposit insurance assessment base required by Dodd-Frank, the final rule modifies these adjustments. In addition, the final rule adds an adjustment for long-term debt held by an insured depository institution where the debt is issued by another insured depository institution.

1. Unsecured Debt Adjustment

The final rule maintains the long-term unsecured debt adjustment, but the amount of the adjustment is now equal to the amount of long-term unsecured liabilities [29] an insured depository institution reports times the sum of 40 basis points plus the institution's initial base assessment rate divided by the amount of the institution's new assessment base; that is: [30]

UDA = (Long-term unsecured liabilities/New assessment base) * (40 basis points + IBAR)

Thus, if an institution with a $10 billion assessment base issued $100 million in long-term unsecured liabilities and had an initial base assessment rate of 20 basis points, its unsecured debt adjustment would be 0.6 basis points, which would result in an annual reduction in the institution's assessment of $600,000.

All other things equal, greater amounts of long-term unsecured debt can reduce the FDIC's loss in the event of a failure, thus reducing the risk to the DIF. Because of this, under the current assessment system, an insured depository institution's assessment rate is reduced through the unsecured debt adjustment, which is based on the amount of long-term, unsecured liabilities the insured depository institution issues. Adding the initial base assessment rate to the adjustment formula maintains the value of the incentive to issue long-term unsecured debt, providing insured depository institutions with the same incentive to issue long-term unsecured debt that they have under the current assessment system.

Unless this revision is made, the cost of issuing long-term unsecured liabilities will rise (as will the cost of funding for all other liabilities except, in most cases, domestic deposits) as there will no longer be a distinction, in terms of the cost of deposit insurance, among the types of liabilities funding the new assessment base. The FDIC remains concerned that this will reduce the incentive for insured depository institutions to issue long-term unsecured debt. Therefore, the final rule, like the proposed rule, revises the adjustment so that the relative cost of issuing long-term unsecured debt will not rise with the implementation of the new assessment base.

The final rule, like the proposed rule, also changes the cap on the unsecured debt adjustment from the current 5 basis points to the lesser of 5 basis points or 50 percent of the institution's initial base assessment rate. This cap will apply to the new assessment base. This change allows the maximum dollar amount of the unsecured debt adjustment to increase because the assessment base is larger, but ensures that the assessment rate after the

[25] Specifically, all asset types described in the instructions to lines 34, 35, 36, and 37 of Schedule RC–R of the Call Report as of December 31, 2010 with a Basel risk weight of 0 percent, regardless of maturity. These types of assets are also currently reported on corresponding line items in the TFR. These same asset types will be used regardless of changes to the Call Report or TFR.

[26] Specifically, 50 percent of those asset types described in the instructions to lines 34, 35, 36, and 37 of Schedule RC–R of the Call Report (or corresponding items in the TFR) with a Basel risk weighting of 20 percent. These types of assets are also currently reported on corresponding line items in the TFR. These same asset types will be used regardless of changes to the Call Report or TFR.

[27] All of the commenters on the issue disagreed with limiting the assets eligible for the deduction to those with a stated maturity of 30 days or less. Most of the comments noted that assets with 20 percent or lower Basel risk weightings are high-quality and liquid, regardless of maturity, and one commenter stated that any breakdown of these assets by maturity would require additional reporting as such information is not currently collected. A number of the comments noted that the maturity of an asset is not the only indicator of the asset's liquidity. Comments from the banks generally argued that custodial deposits are relatively stable—akin to core deposits, rather than wholesale deposits—and, as such, it would be imprudent for them to manage their portfolios by matching these deposits strictly to assets with a maturity of 30 days or less.

[28] 74 FR 9525 (March 4, 2009).

[29] Unsecured debt remains as defined in the 2009 Final Rule on Assessments, with the exceptions (discussed below) of the exclusion of Qualified Tier 1 capital and certain redeemable debt. See 74 FR 9537 (March 4, 2009).

[30] The IBAR is the institution's initial base assessment rate.

adjustment is applied does not fall to zero.

In addition, the final rule, like the proposed rule, eliminates Qualified Tier 1 capital from the definition of unsecured debt. Under the current assessment system, the unsecured debt adjustment includes certain amounts of Tier 1 capital (Qualified Tier 1 capital) for insured depository institutions with less than $10 billion in assets. Since the new assessment base excludes Tier 1 capital, defining long-term, unsecured liabilities to include Qualified Tier 1 capital would have the effect of providing a double deduction for this capital.

Finally, the final rule, unlike the proposed rule, slightly alters the definition of long-term unsecured debt. At present, and under the proposed rule, long-term unsecured debt is defined as long-term if the unsecured debt has at least one year remaining until maturity. The final rule provides that long-term unsecured debt is long-term if the debt has at least one year remaining until maturity, unless the investor or holder of the debt has a redemption option that is exercisable within one year of the reporting date. Such a redemption option negates the benefit of long-term debt to the DIF.

2. Comments

Some commenters expressed support for increasing the adjustment to 40 basis points plus the initial base assessment rate.

A number of commenters believed that the long-term unsecured liability definition should be expanded to include short-term unsecured liabilities, uninsured deposits and foreign office deposits or all liabilities subordinate to the FDIC. A few commenters also stated that the original, rather than remaining, maturity of unsecured debt should be used to determine whether unsecured debt qualifies as long term.

The FDIC does not believe that the definition of long-term liabilities should be expanded. Short-term unsecured liabilities (including those that were long-term at issuance) provide less protection to the DIF in the event of failure. By the time an institution fails, unsecured debt remaining at an institution is primarily longer-term debt that has not yet come due. Thus, providing a benefit for short-term unsecured debt does not make sense, since this kind of debt is unlikely to provide any cushion to absorb losses in the event of failure. Similarly, the FDIC does not agree that unsecured debt should include foreign office deposits, since there is likely to be a significant reduction in these deposits by the time of failure. In addition, while, under U.S. law, foreign deposits are subordinate to domestic deposits in the event an institution fails, they can be subject to asset ring-fencing that effectively makes them similar to secured liabilities.

One commenter stated that the long-term unsecured liability definition should include goodwill and other intangibles. The FDIC does not agree. The purpose of this adjustment is to provide an incentive for insured depository institutions to issue long-term unsecured debt to absorb losses in the event an institution fails. Goodwill and other intangibles are assets (rather than liabilities) and they provide little to no value to the FDIC in a resolution.

One commenter recommended that the unsecured debt adjustment cap should be increased or removed. The commenter argued that all long-term unsecured claims subordinate to the FDIC reduce the FDIC's risk equally and the cap artificially and arbitrarily mutes the effect. Further, the commenter noted that a bank with a lower initial base assessment rate and arguably less risk to the FDIC should not have a lower cap simply due to its lower initial base assessment rate. The FDIC disagrees. An excessive deduction could create moral hazard. While the FDIC acknowledges that an institution with a lower initial base assessment rate may have a lower cap than one with a higher initial base assessment rate, the FDIC believes that, to avoid the potential for moral hazard that would ensue from an assessment rate at or near zero, all institutions should pay some assessment. Thus, setting the cap at half of the initial base assessment rate is appropriate.

3. Depository Institution Debt Adjustment

Like the proposed rule, the final rule creates a new adjustment, the depository institution debt adjustment (DIDA), which is meant to offset the benefit received by institutions that issue long-term, unsecured liabilities when those liabilities are held by other insured depository institutions.[31] However, in response to comments, the final rule allows an institution to exclude from the unsecured debt amount used in calculating the DIDA an amount equal to no more than 3 percent of the institution's Tier 1 capital as posing de minimis risk. Therefore, the final rule will apply a 50 basis point DIDA to every dollar (above 3 percent of an institution's Tier 1 capital) of long-term unsecured debt held by an insured depository institution when that debt is issued by another insured depository institution.[32] Specifically, the adjustment will be determined according to the following formula:

DIDA = [(Long-term unsecured debt issued by another insured depository institution—3% * Tier 1 capital) * 50 basis points]/New assessment base

An institution should use the same valuation methodology to calculate the amount of long-term unsecured debt issued by another insured depository institution that it holds as it uses to calculate the amount of such debt for reporting on the asset side of the balance sheets.

Although issuance of unsecured debt by an insured depository institution lessens the potential loss to the DIF in the event of an insured depository institution's failure, when this debt is held by other insured depository institutions, the overall risk to the DIF is not reduced as much. For this reason, the final rule increases the assessment rate of an insured depository institution that holds this debt. The FDIC considered reducing the benefit from the unsecured debt adjustment received by insured depository institutions when their long-term unsecured debt is held by other insured depository institutions, but debt issuers generally do not track which entities hold their debt. The FDIC believes that the magnitude of the DIDA will approximately offset the decrease in the assessment rate of the issuing institution, and will discourage insured depository institutions from holding excessive amounts of other insured depository institutions' debt.

4. Comments

A number of commenters noted that the proposed level of 50 basis points for the DIDA is excessive relative to the risk presented to the FDIC. The FDIC disagrees. A fixed level of 50 basis points was established to generally offset the deduction received by the issuing institution of 40 basis points plus the initial base assessment rate. While the initial base assessment rate for the issuing institution may be less or greater than 10 basis points, the FDIC believes that 50 basis points is an appropriate approximation to offset the deduction to the issuing insured depository institution and to discourage insured depository institutions from

[31] For this reason, the long-term unsecured debt that is subject to the DIDA is defined in the same manner as the long-term unsecured debt that qualifies for the unsecured debt adjustment.

[32] Debt issued by an entity other than an insured depository institution, including such an uninsured entity that owns or controls, either directly or indirectly, an insured depository institution, is not subject to the DIDA.

holding excessive amounts of each other's debt, which leaves the risk from such debt within the banking system.

A few commenters noted that a 50 basis point increase is punitive towards insured depository institutions that wish to manage a diversified portfolio of earning assets, including unsecured debt issued by strong depository insured institutions. The FDIC recognizes that the 50 basis point charge represents a disincentive to insured depository institutions to purchase the unsecured debt of another insured institution. That is one of the goals of the adjustment. However, the FDIC concedes that a small amount of debt that would otherwise be subject to the DIDA could be held to facilitate prudent portfolio management activities and, as discussed above, has created a de minimis exception.

Another commenter noted that the implementation of the 50-basis point adjustment could cause banks that issue unsecured debt to face reduced access to liquidity and funding, resulting from an increased cost of issuing unsecured debt to insured depository institutions. The FDIC believes that an increase, if any, in the cost of funding as the result of this adjustment will be significantly less than the long-term unsecured debt reduction an issuer receives. Further, the FDIC's exclusion of a de minimis amount of debt issued by insured depository institutions should minimize or eliminate any potential effect. The FDIC's intent is only to permit a net reduction in insurance premiums in the event that the risk of default on unsecured debt issued by an insured depository institution has limited or no effect on any other insured depository institution.

A few commenters stated that a cap should be set for the DIDA. The FDIC disagrees, since a cap would undermine the purpose of the DIDA.

A few commenters stated that the DIDA will result in a reporting burden for insured depository institutions, particularly since CUSIP numbers do not identify industries. The FDIC disagrees. The FDIC believes that a bank should know and understand the attributes of its investments, including, among other things, the name of the issuer and the industry that the issuer operates in. While the FDIC acknowledges some reporting modifications may have to be made at some institutions, the FDIC believes those changes can be accomplished at minimal time and cost.

5. Secured Liability Adjustment

The final rule, like the proposed rule, discontinues the secured liability adjustment. In arguing for the secured liability adjustment the FDIC stated that, "[t]he exclusion of secured liabilities can lead to inequity. An institution with secured liabilities in place of another's deposits pays a smaller deposit insurance assessment, even if both pose the same risk of failure and would cause the same losses to the FDIC in the event of failure." The change in the assessment base will eliminate the advantage of funding with secured liabilities associated with the current assessment base (domestic deposits), thus eliminating the rationale for continuing the adjustment.

6. Comments

A few commenters stated support for the removal of the secured liability adjustment, although one commenter opined that FHLB funding is more damaging to the FDIC than brokered deposits. On balance, the FDIC believes that including secured liabilities in the assessment base has removed the need for the secured liability adjustment.

7. Brokered Deposit Adjustment

The final rule, like the proposed rule, retains the current adjustment for brokered deposits, but scales the adjustment to the new assessment base by the insured depository institution's ratio of domestic deposits to the new assessment base. The new formula for brokered deposits is the following:

BDA = ((Brokered deposits − (Domestic deposits * 10%))/New assessment base) * 25 basis points

As discussed below, the final rule changes the assessment system for large institutions and eliminates risk categories for these institutions. Based on comments, however, the final rule provides an exemption from the brokered deposit adjustment for certain large institutions. The brokered deposit adjustment will not apply to those large institutions that are well-capitalized and have a composite CAMELS rating of 1 or 2. The FDIC believes that this exemption will result in a more equitable distribution of assessments. The brokered deposit adjustment does not apply to small institutions that are well-capitalized and have a composite CAMELS rating of 1 or 2. The brokered deposit adjustment will continue to apply to all other large institutions and to small institutions in risk categories II, III, and IV when the ratio of brokered deposits to domestic deposits exceeds 10 percent. As discussed, small Risk Category I institutions will continue to be excluded.

The final rule, like the proposed rule, maintains a cap on the adjustment of 10 basis points. The FDIC recognizes that keeping the cap constant could result in an increase in the amount an institution is assessed due to the adjustment, since the cap will apply to a larger assessment base. However, the FDIC remains concerned that significant reliance on brokered deposits tends to increase an institution's risk profile, particularly as its financial condition weakens.

8. Comments

A few commenters noted that the FDIC has not demonstrated a positive correlation between bank failures and the use of brokered deposits, which is inconsistent with a risk-based assessment system. The FDIC disagrees. A number of costly institution failures, including some recent failures, involved rapid asset growth funded through brokered deposits. Moreover, the presence of brokered deposits in a failed institution tends to reduce its franchise value, resulting in increased losses to the DIF.

Numerous comment letters argued that certain types of brokered deposits, including reciprocal deposits and sweeps, should be excluded from the brokered deposit adjustment because they are more stable than other types of brokered deposits. The FDIC considered the substance of these comments when it originally adopted the brokered deposit adjustment and remains unpersuaded. The final rule does not apply the brokered deposit adjustment to a well-capitalized, CAMELS 1- or 2-rated institution. When an institution's condition declines and it becomes less than well capitalized or is not rated CAMELS 1 or 2, statutory and market restrictions on brokered deposits become much more relevant. For this reason, the FDIC has decided to continue to include all brokered deposits above 10 percent of an institution's domestic deposits in the brokered deposit adjustment.

A few commenters noted that Dodd-Frank directs the FDIC to study the definition of brokered deposits. The commenters contend that determining the definition of brokered deposit prior to completion of the study is counter to the intent of Congress. The FDIC will continue to use its current definition for the present, but will examine the definition in light of the completed study and will consider changes then, if appropriate.

One commenter argued for a reduction of the cap from 10 basis points to 6.5 basis points given the increase in assessment base. While the FDIC acknowledges that maintaining the 10 basis point cap could increase the size of the adjustment as a result in the

change in assessment base, the FDIC believes this increase is appropriate. The FDIC remains concerned that significant reliance on brokered deposits tends to increase an institution's risk profile, particularly as it weakens.

V. The Final Rule: Dividends and Assessment Rates

A. Dividends

1. Final Rule

As proposed in the October NPR and consistent with the FDIC's long-term, comprehensive plan for fund management, the final rule suspends dividends indefinitely whenever the fund reserve ratio exceeds 1.5 percent to increase the probability that the fund reserve ratio will reach a level sufficient to withstand a future crisis.[33] In lieu of dividends, and pursuant to its authority to set risk-based assessments, the final rule adopts progressively lower assessment rate schedules when the reserve ratio exceeds 2 percent and 2.5 percent, as discussed below. These lower assessment rate schedules serve much the same function as dividends in preventing the DIF from growing unnecessarily large but, as discussed in the October NPR, provide more stable and predictable effective assessment rates, a feature that industry representatives said was very important at the September 24, 2010 roundtable organized by the FDIC.

2. Comments

In the October NPR, the FDIC had proposed suspending dividends "permanently." One trade group, representing community banks, agreed that permanently foregoing dividends:

> [I]s much more likely to ensure steady, predictable assessment rates. While we think that the FDIC should never completely rule out the possibility of paying a dividend from the DIF, we believe that at least until the DIF reserve ratio reaches 2.5 percent, it is prudent to forego a dividend in favor of steady, predictable assessment rates.

Another trade group argued that a permanent suspension of dividends is an unnecessary limitation on the FDIC's discretion under Dodd-Frank. The trade group argued that decisions on dividends should be based on facts and circumstances whenever the reserve ratio exceeds 1.5 percent. If the suspension is adopted, the trade group believes that the FDIC should provide that it could be lifted in appropriate circumstances.

The FDIC is persuaded that the word "indefinitely" should be used in place of the word "permanently," although the distinction is semantic. The rule is not intended to, and in any event, could not abrogate the authority of future FDIC Boards of Directors to adopt a different rule governing dividends.

Another trade group argued that the FDIC should establish a dividend policy to slow the growth of the insurance fund as it approaches an upper limit. In the FDIC's view, the historical analysis set out in the October NPR and updated in the DRR final rule, as described above, reveals that lower rates, like dividends, can effectively slow the growth of the reserve ratio, but can lead to less volatility in effective assessment rates.

B. Assessment Rate Schedules

1. Rate Schedule Effective April 1, 2011

Pursuant to the FDIC's authority to set assessments, the initial and total base assessment rates described in Table 3 below will become effective April 1, 2011. These rates are identical to those proposed in the Assessment Base NPR. (The rate schedule does not include the depository institution debt adjustment.)

TABLE 3—INITIAL AND TOTAL BASE ASSESSMENT RATES *

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	5–9	14	23	35	5–35
Unsecured debt adjustment **	(4.5)–0	(5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment		0–10	0–10	0–10	0–10
Total Base Assessment Rate	2.5–9	9–24	18–33	30–45	2.5–45

* Total base assessment rates do not include the depository institution debt adjustment.

** The unsecured debt adjustment cannot exceed the lesser of 5 basis points or 50 percent of an insured depository institution's initial base assessment rate; thus for example, an insured depository institution with an initial base assessment rate of 5 basis points will have a maximum unsecured debt adjustment of 2.5 basis points and cannot have a total base assessment rate lower than 2.5 basis points.

The FDIC believes that the change to a new, expanded assessment base should not change the overall amount of assessment revenue that the FDIC would otherwise have collected using the assessment rate schedule under the Restoration Plan adopted by the Board on October 19, 2010.[34] Several industry trade groups and insured institutions supported this approach. Based on the FDIC's estimations, the rate schedule in Table 3 above will result in the collection of assessment revenue that is approximately revenue neutral.[35] [36] Because the new assessment base under Dodd-Frank is larger than the current assessment base, the assessment rates in Table 3 above are lower than current rates.

The rate schedule in Table 3 includes a column for institutions with at least $10 billion in total assets. This column represents the assessment rates that will be applied to institutions of this size pursuant to the changes to the large institution pricing system discussed below. The range of total base assessment rates (2.5 basis points to 45 basis points) is the same for institutions of all sizes; however, institutions with at least $10 billion in total assets will not be assigned to risk categories.

[33] As discussed above, Dodd-Frank continued the FDIC's authority to declare dividends when the reserve ratio at the end of a calendar year is at least 1.5 percent, but granted the FDIC sole discretion in determining whether to suspend or limit the declaration or payment of dividends. Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 332, 124 Stat. 1376, 1539 (codified at 12 U.S.C. 1817(e)(2)(B)).

[34] 75 FR 66293 (October 27, 2010).

[35] Specifically, the FDIC has attempted to determine a rate schedule that would have generated approximately the same revenue as that generated under the current rate schedule in the second and third quarters of 2010 using the current assessment base.

[36] As discussed earlier, under Dodd-Frank, the FDIC is required to offset the effect on small institutions (those with less than $10 billion in assets) of the statutory requirement that the fund reserve ratio increase from 1.15 percent to 1.35 percent by September 30, 2020. Thus, assessment rates applicable to all insured depository institutions need only be set high enough to reach 1.15 percent. The Restoration Plan postpones until later this year rulemaking regarding the method that will be used to reach 1.35 percent by the statutory deadline of September 30, 2020, and the manner of offset.

The final rule retains the FDIC Board's flexibility to adopt actual rates that are higher or lower than total base assessment rates without the necessity of further notice-and-comment rulemaking, but provides that: (1) The Board cannot increase or decrease rates from one quarter to the next by more than 2 basis points (rather than the current and proposed 3 basis points); and (2) cumulative increases and decreases cannot be more than 2 basis points higher or lower than the total base assessment rates. Retention of this flexibility (with the proportionate reduction in the size of the adjustment) will continue to allow the Board to act in a timely manner to fulfill its mandate to raise the reserve ratio in accordance with the Restoration Plan, particularly in light of the increased uncertainty about expected revenue resulting from the change in the assessment base. The reduction from 3 to 2 basis points was prompted by an industry trade group, which noted that 2 basis points of the new assessment base is approximately equal to 3 basis points of the domestic deposit assessment base.

2. Analysis of Statutory Factors for the New Rate Schedule

In setting assessment rates, the FDIC's Board of Directors is authorized to set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate.[37] In setting assessment rates, the FDIC's Board of Directors is required by statute to consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C Section 1817(b)(1)) under the risk-based assessment system, including the requirement under section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C Section 1817(b)(1)(A)) to maintain a risk-based system.[38]

(v) Other factors the Board of Directors has determined to be appropriate.

Section 7(b)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(B).

When the Board adopted the most recent Restoration Plan, it left the current assessment rate schedule in effect and took these statutory factors into account. The Restoration Plan requires that the FDIC update income and loss projections semiannually. The Board's decision to leave current assessment rates in effect was based on the FDIC's most recent projections, which projected lower expected losses for the period 2010 through 2014 than the FDIC's projections in June 2010 (approximately $50 billion rather than approximately $60 billion as projected in June 2010).[39] Because of the lower expected losses and the additional time provided by Dodd-Frank to meet the minimum (albeit higher) required reserve ratio, the FDIC opted, in the new Restoration Plan, to forego the uniform 3 basis point increase in assessment rates previously scheduled to go into effect on January 1, 2011. The FDIC estimated that the fund reserve ratio will reach 1.15 percent in 2018, even without the 3 basis point uniform increase in rates. As stated above, the final rule changes the current assessment rate schedule such that the new assessment rate schedule (applied against the new assessment base) will result in the collection of about the same amount of assessment revenue as the current assessment rate schedule applied against the domestic deposit assessment base.

For this reason, as stated in the Assessment Base NPR, the new assessment rates and assessment base should, overall, have no effect on the capital and earnings of the banking industry, although the new rates and base will affect the earnings and capital of individual institutions. The great majority of institutions will pay assessments at least 5 percent lower than currently and would thus have higher earnings and capital. However, 117 insured depository institutions, comprising 71 small institutions and 46 large institutions, would pay assessments at least 5 percent higher than they currently do. Appendix 1 contains additional detail on the projected effects of increases or decreases in assessments on the capital and earnings of insured depository institutions.

3. Comments on New Rate Schedule

Comments on the new rate schedule effective April 1, 2011, focused on two areas: The appropriateness of the shift in the rate schedule due to the new assessment base and the speed at which these rates would restore the DIF to 1.15 percent. As stated above, commenters generally supported the rate schedule in light of the new assessment base, since it maintains approximate revenue neutrality.

Several trade groups believed that the FDIC's projection for how quickly the reserve ratio will recover was too pessimistic and, thus, the rate schedule to restore the DIF was too high. A trade group believed that the revenue from the Temporary Liquidity Guarantee Program will allow the reserve ratio to reach 1.35 percent by 2017. A trade group also suggested basing reserve ratio projections on loss rates from the recovery period after the crisis of the early 1990s. Some commenters urged the FDIC to monitor progress of the Restoration Plan and reduce rates if the DIF reserve ratio reaches 1.35 percent more quickly than the FDIC has projected.

The FDIC has projected that the reserve ratio will reach 1.15 percent at the end of 2018. This projection was based on approximately $50 billion in losses from bank failures in 2010 through 2014 with markedly lower losses thereafter. (In fact, losses for 2017 and each year thereafter were assumed to equal average annual losses from 1995 to 2004, a period of very low fund losses.) The FDIC did not include income from the TLGP, because it believes that it is too early to determine the amount that may be transferred to the DIF when the TLGP ends at the end of 2012.

The FDIC does not believe that its projections are too pessimistic. Given the uncertainty of the pace of recovery in the economy and banking industry, as well as the uncertainty inherent in projecting reserve ratios eight years in advance, the FDIC believes that lowering assessment rates now (in addition to foregoing the 3 basis point rate increase previously scheduled to take effect in 2011) would not be prudent. However, under the Restoration Plan, the FDIC is required to update its loss and income projections

[37] 12 U.S.C. 1817(b)(2)(A).

[38] The risk factors referred to in factor (iv) include:

(i) The probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) Different categories and concentrations of assets;

(II) Different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) Any other factors the Corporation determines are relevant to assessing such probability;

(ii) The likely amount of any such loss; and

(iii) The revenue needs of the Deposit Insurance Fund.

Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)).

[39] The projections also cover expenses and the reserve ratio. The FDIC anticipates that the next semiannual update of projections will occur in the first half of 2011.

for the fund at least semiannually and, if necessary—for example, if there is a change in the projected losses from bank failures—increase or decrease assessment rates to meet the statutory minimum reserve ratio by September 2020. (Such an increase or decrease would not affect the assessment rate schedules below.)

An industry trade group commented that, given the FDIC's decision in October 2010 to forego the uniform 3 basis point increase in assessment rates scheduled to go into effect on January 1, 2011, the FDIC should reassess its cash needs and return excess prepaid assessments earlier, such as by December 2011. The FDIC will continue to monitor its cash resources to determine whether to undertake a rulemaking to return unused portions of the prepayments before the scheduled return date.

4. Rate Schedule Once the Reserve Ratio Reaches 1.15 Percent

Pursuant to the FDIC's authority to set assessments, the initial base and total base assessment rates set forth in Table 4 below will take effect beginning the assessment period after the fund reserve ratio first meets or exceeds 1.15 percent, without the necessity of further action by the FDIC's Board. These rates are identical to those proposed in the Assessment Base NPR. The rates will remain in effect unless and until the reserve ratio meets or exceeds 2 percent. The FDIC's Board will retain its authority to uniformly adjust the total base rate assessment schedule up or down without further rulemaking, but the adjustment cannot exceed 2 basis points.

TABLE 4—INITIAL AND TOTAL BASE ASSESSMENT RATES *

[Once the reserve ratio reaches 1.15 percent and the reserve ratio for the immediately prior assessment period Is less than 2 percent [40]]

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	3–7	12	19	30	3–30
Unsecured debt adjustment **	(3.5)–0	(5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment		0–10	0–10	0–10	0–10
Total Base Assessment Rate	1.5–7	7–22	14–29	25–40	1.5–40

* Total base assessment rates do not include the depository institution debt adjustment.

** The unsecured debt adjustment cannot exceed the lesser of 5 basis points or 50 percent of an insured depository institution's initial base assessment rate; thus, for example, an insured depository institution with an initial base assessment rate of 3 basis points will have a maximum unsecured debt adjustment of 1.5 basis points and cannot have a total base assessment rate lower than 1.5 basis points.

When the reserve ratio reaches 1.15 percent, the FDIC believes that it is appropriate to lower assessment rates so that the average assessment rate will approximately equal the long-term moderate, steady assessment rate—5.29 basis points, as discussed in the October NPR and the DRR final rule—that would have been needed to maintain a positive fund balance throughout past crises.[41] Doing so is consistent with the goals of the FDIC's comprehensive, long-term fund management plan, which are to: (1) Reduce the pro-cyclicality in the existing risk-based assessment system by allowing moderate, steady assessment rates throughout economic and credit cycles; and (2) maintain a positive fund balance even during a banking crisis by setting an appropriate target fund size and a strategy for assessment rates and dividends.

The FDIC considers these goals important for several reasons. During an economic and banking downturn, insured institutions can least afford to pay high deposit insurance assessment rates. Moreover, high assessment rates during a downturn reduce the amount that banks can lend when the economy most needs new lending. Consequently, it is important to reduce pro-cyclicality in the assessment system and allow moderate, steady assessment rates throughout economic and credit cycles. As discussed above, at a September 24, 2010 roundtable organized by the FDIC, bank executives and industry trade group representatives uniformly favored steady, predictable assessments and objected to high assessment rates during crises.

It is also important that the fund not decline to a level that could risk undermining public confidence in federal deposit insurance. Furthermore, although the FDIC has significant authority to borrow from the Treasury to cover losses when the fund balance approaches zero, the FDIC views the Treasury line of credit as available to cover unforeseen losses, not as a source of financing projected losses. A sufficiently large fund is a necessary precondition to maintaining a positive fund balance during a banking crisis

[40] The Assessment Base NPR contained a typographical error in the lower range of the total base assessment rates for Risk Category IV. It stated that the range of rates was 29 basis points to 40 basis points; it should have stated that the range was 25 basis points to 40 basis points. The final rule corrects the error.

[41] The FDIC arrived at the rate schedule in Table 4 as follows. First, the FDIC determined the rate schedule that would have been needed during a period when insured depository institutions had strong earnings to achieve approximately an 8.5 basis point average assessment rate, which is the long-term, moderate, steady assessment rate that would have been needed to maintain a positive fund balance throughout past crises using a domestic deposit assessment base. Based on the FDIC's analysis of weighted average assessment rates paid immediately prior to the current crisis (when the industry was relatively prosperous, and had both good CAMELS ratings and substantial capital), weighted average rates during times of industry prosperity tend to be somewhat less than 1 basis point greater than the minimum initial base assessment rate applicable to Risk Category I (for rates applicable to a domestic deposit assessment base). The first year in which rates applicable to Risk Category I spanned a range (as opposed to being a single rate) was 2007, when initial assessment rates ranged between 5 and 7 basis points. During that year, weighted average annualized industry assessment rates for the first three quarters varied between 5.41 and 5.44 basis points. (By the end of 2007, deterioration in the industry became more marked and weighted average rates began increasing.) The difference between the minimum rate and the weighted average rate (approximately 0.4 basis points) is 20 percent of the 2 basis point difference between the then existing minimum and maximum rates. 20 percent of the 4 basis point difference between the current, domestic deposit minimum and maximum rates is 0.8 basis points. By analogy, in 2007 the current assessment schedule would have produced average assessment rates of about 12.8 basis points. Thus, to achieve, during prosperous times, approximately an 8.5 basis point average assessment rate, initial base rates would have to be set about 4 basis points lower than current initial base assessment rates (applied against the domestic deposit assessment base). This analysis underlay the rate schedule in the October NPR that was proposed to become effective when the reserve ratio reaches 1.15 percent. As of June 30, 2010, the rate schedule in Table 4 applied against the Dodd-Frank mandated assessment base would have produced approximately the same amount of revenue as the October NPR's proposed rate schedule applied against the domestic deposit assessment base.

and allowing for long-term, steady assessment rates.

5. Rate Schedule Once the Reserve Ratio Reaches 2.0 Percent

In lieu of dividends, and pursuant to the FDIC's authority to set assessments, the initial base and total base assessment rates set forth in Table 5 below will come into effect without further action by the FDIC Board when the fund reserve ratio at the end of the prior assessment period meets or exceeds 2 percent, but is less than 2.5 percent.[42] These rates are identical to those proposed in the Assessment Base NPR. The FDIC's Board will retain its authority to uniformly adjust the total base rate assessment schedule up or down without further rulemaking, but the adjustment cannot exceed 2 basis points.[43]

TABLE 5—INITIAL AND TOTAL BASE ASSESSMENT RATES *

[If the reserve ratio for prior assessment period is equal to or greater than 2 percent and less than 2.5 percent]

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	2–6	10	17	28	2–28
Unsecured debt adjustment **	(3)–0	(5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment		0–10	0–10	0–10	0–10
Total Base Assessment Rate	1–6	5–20	12–27	23–38	1–38

* Total base assessment rates do not include the depository institution debt adjustment.

** The unsecured debt adjustment could not exceed the lesser of 5 basis points or 50 percent of an insured depository institution's initial base assessment rate; thus, for example, an insured depository institution with an initial assessment rate of 2 basis points will have a maximum unsecured debt adjustment of 1 basis point and could not have a total base assessment rate lower than 1 basis point.

The historical analysis discussed above revealed that, in lieu of dividends, reducing the 5.29 basis point weighted average assessment rate by 25 percent when the reserve ratio reached 2 percent allowed the fund to remain positive during prior banking crises and successfully limited rate volatility. The assessment rates in Table 5 should produce a weighted average assessment rate approximately 25 percent lower than the assessment rates in Table 4 during periods of industry prosperity.[44]

6. Rate Schedule Once the Reserve Ratio Reaches 2.5 Percent

Also in lieu of dividends, and pursuant to the FDIC's authority to set assessments, the initial base and total base assessment rates set forth in Table 6 below will come into effect without further action by the FDIC Board when the fund reserve ratio at the end of the prior assessment period meets or exceeds 2.5 percent.[45] These rates are identical to those proposed in the Assessment Base NPR. The FDIC's Board will retain its authority to uniformly adjust the total base rate assessment schedule up or down without further rulemaking, but the adjustment cannot exceed 2 basis points.[46]

TABLE 6—INITIAL AND TOTAL BASE ASSESSMENT RATES *

[If the reserve ratio for the prior assessment period is equal to or greater than 2.5 percent]

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	1–5	9	15	25	1–25
Unsecured debt adjustment **	(2.5)–0	(4.5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment		0–10	0–10	0–10	0–10
Total Base Assessment Rate	0.5–5	4.5–19	10–25	20–35	0.5–35

* Total base assessment rates do not include the depository institution debt adjustment.

** The unsecured debt adjustment could not exceed the lesser of 5 basis points or 50 percent of an insured depository institution's initial base assessment rate; thus, for example, an insured depository institution with an initial assessment rate of 1 basis point will have a maximum unsecured debt adjustment of 0.5 basis points and could not have a total base assessment rate lower than 0.5 basis points.

[42] New institutions will remain subject to the assessment schedule in Table 4 when the reserve ratio reaches 2 percent. Subject to exceptions, a new insured depository institution is a bank or savings association that has been federally insured for less than five years as of the last day of any quarter for which it is being assessed. 12 CFR 327.8(j).

[43] However, the lowest total base assessment rate cannot be negative.

[44] The FDIC arrived at the rate schedule in Table 5 as follows. As described in an earlier footnote, based on the FDIC's analysis of weighted average assessment rates paid immediately prior to the current crisis (when the industry was relatively prosperous, and had both good CAMELS ratings and substantial capital), weighted average rates during times of industry prosperity tend to be somewhat less than 1 basis point greater than the minimum initial base assessment rate applicable to Risk Category I (for rates applicable to a domestic deposit assessment base). Given this relationship, as described in an earlier footnote, the FDIC determined that the rate schedule that would have been needed during prosperous times to achieve approximately an 8.5 basis point average assessment rate would have had a minimum initial base assessment rate of 8 basis points. Similarly, the assessment rate schedule that, when applied to the domestic deposit assessment base would reduce the weighted average assessment rate by approximately 25 percent, would have had a minimum initial base assessment rate of 6 basis points (Table 4 in the October NPR). The FDIC then determined the relative diminution in assessment revenue that would have occurred using Table 4, rather than current assessment rates, applied against the domestic deposit assessment base as of June 30, 2010. Applying the rates in Table 5 rather than those in Table 4 against the Dodd-Frank assessment base as of June 30, 2010, would have produced a similar relative diminution in assessment revenue.

[45] New institutions will remain subject to the assessment schedule in Table 4 when the reserve ratio reaches 2.5 percent.

[46] However, the lowest initial base assessment rate cannot be negative.

The historical analysis discussed above revealed that, in lieu of dividends, further reducing the 5.29 basis point weighted average assessment rate by 25 percent when the reserve ratio reached 2 percent and by 50 percent when the reserve ratio reached 2.5 percent allowed the fund to remain positive during prior banking crises and successfully limited rate volatility. The assessment rates in Table 6 should produce a weighted average assessment rate approximately 50 percent lower than the assessment rates in Table 4 during periods of industry prosperity.[47]

7. Analysis of Statutory Factors for Future Rate Schedules

The FDIC Board took into account the required statutory factors when adopting the rate schedules that will take effect when the reserve ratio reaches 1.15 percent, 2 percent and 2.5 percent.[48] These rate schedules were based on the historical analysis in the October NPR and the updated historical analysis in the DRR final rule. These analyses took into account fund operating expenses, resolution expenses and income over many decades to determine assessment rates that would keep the fund positive and assessment rates stable even during crises like those that have occurred within the past 30 years.

As the FDIC stated in the October NPR, it anticipates that when the reserve ratio exceeds 1.15 percent, and particularly when it exceeds 2 or 2.5 percent, the industry is likely to be prosperous. Consequently, to determine the effect on earnings and capital of lowering rates (once the reserve ratio thresholds are met) after taking into account the new assessment base, the FDIC examined the effect of the lower rates on the industry at the end of 2006, when the industry was prosperous. Under that scenario, reducing assessment rates when the reserve ratio reaches 1.15 percent would have increased average after-tax income by 1.25 percent and average capital by 0.14 percent. Reducing assessment rates when the reserve ratio reaches 2 percent would have further increased average after-tax income by 0.62 percent and average capital by 0.07 percent. Similarly, reducing assessment rates when the reserve ratio reaches 2.5 percent would have further increased average after-tax income by 0.61 percent and average capital by 0.07 percent. Decreasing assessment rates as provided in the final rule would not negatively affect the capital or earnings of any insured depository institution.

8. Comments on Future Rate Schedules

Commenters generally favored the establishment of a long-term, steady, predictable rate schedule that does not fluctuate with economic and credit cycles. One trade group stated that "[t]he more consistent and steady the premiums can be, the better bankers are able to plan and continue their work in their local communities." The FDIC agrees that setting this long-term rate schedule now will bring more stability and transparency to the deposit insurance system.

However, an industry trade group argued that, by maintaining the 4 basis point difference between minimum and maximum Risk Category I initial base assessment rates and applying these rates to a larger assessment base, the proposed assessment rates would effectively widen the assessment spread within Risk Category I. The trade group recommended that the spread be reduced when the FDIC lowers the overall assessment schedule in the future. The FDIC is not convinced. In the FDIC's view, risk differentiation becomes more important during times of banking prosperity, particularly when an expansion continues for a long period. During these periods, insured depository institutions are lending more and taking on more risk and greater risk differentiation allows this risk to be captured.

One trade group argued that these assessment rates would cause the reserve ratio to increase from 1.15 percent to 2 percent within 3 years and were therefore too high. The FDIC disagrees. The FDIC projects that it will take about 9 years for the fund to grow from 1.15 percent to 2 percent, assuming very low fund losses (the average loss rate from 1995 to 2004, a period of very low fund losses) and forward interest rates as of the date the projection was made.[49]

This trade group also stated that the rate reductions at 2 and 2.5 percent do not effectively restrict the growth of the insurance fund and instead create an "effective floor" for the fund. The trade group also argued that the FDIC's analysis ignored the large amount of interest income that would be generated by a fund with a reserve ratio of 2 percent, and that this would be particularly significant during periods of stability and low losses to the fund.

As described in the section on dividends above, the FDIC believes the rate decreases do effectively limit the growth of the insurance fund while preventing the moral hazard that would occur if institutions paid no assessments at all. Furthermore, the FDIC's analysis reveals that it would require very low losses over many years for the fund to reach 2.5 percent. Given the experience of the past 30 years, the FDIC considers it unlikely that the fund would experience such a prolonged period of low losses. Moreover, in the FDIC's 75 year history, the fund reserve ratio has never reached 2 percent.[50]

Moreover, the FDIC's analysis did not ignore interest income. The analysis simulated fund growth by combining assessment income and investment income earned based on historical interest rates. The analysis covered periods of stability and low losses as well as crisis periods accompanied by high losses. It covered periods of high interest rates as well as low rates. The simulated fund also covered an extended period during which the fund reached or exceeded a reserve ratio of 2 percent. This period was not

[47] The FDIC arrived at the rate schedule in Table 6 as follows. As described in an earlier footnote, based on the FDIC's analysis of weighted average assessment rates paid immediately prior to the current crisis (when the industry was relatively prosperous, and had both good CAMELS ratings and substantial capital), weighted average rates during times of industry prosperity tend to be somewhat less than 1 basis point greater than the minimum initial base assessment rate applicable to Risk Category I (for rates applicable to a domestic deposit assessment base). Given this relationship, as described in an earlier footnote, the FDIC determined that the rate schedule that would have been needed during prosperous times to achieve approximately an 8.5 basis point average assessment rate would have had a minimum initial base assessment rate of 8 basis points. Similarly, the assessment rate schedule that, when applied to the domestic deposit assessment base would reduce the weighted average assessment rate by approximately 50 percent, would have had a minimum initial base assessment rate of 4 basis points (Table 5 in the October NPR). The FDIC then determined the relative diminution in assessment revenue that would have occurred using Table 5, rather than current assessment rates, applied against the domestic deposit assessment base as of June 30, 2010. Applying the rates in Table 6 rather than those in Table 4 against the Dodd-Frank assessment base as of June 30, 2010, would have produced a similar relative diminution in assessment revenue.

[48] As noted earlier, in setting assessment rates, the FDIC's Board of Directors is authorized to set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary. 12 U.S.C. 1817(b)(2)(A). In so doing, the Board must consider certain statutorily defined factors. 12 U.S.C. 1817(b)(2)(B). As reflected in the text, the FDIC has taken into account all of these statutory factors.

[49] Using forward interest rates as of December 3, 2010, when forward rates were slightly higher than those used in the original projection, the FDIC still projects that it will take 8 years for the fund to grow from 1.15 percent to 2 percent.

[50] In addition, the rule does not create an effective floor above 2 percent. In the analysis, when the reserve ratio fell below 2 percent, rates did not need to rise above the necessary long-term assessment rate to keep the fund from becoming negative. Instead, rates could be held constant at the long-term assessment rate in keeping with the goal of reducing pro-cyclicality.

accompanied by rapid fund growth, and fund growth was limited by assessment rate reductions. Had fund growth not been interrupted by periods of high losses during the 60-year period, the fund might gradually have reached a much larger size, but, historically, unbroken periods of stability are not the norm—rather they are interrupted by periods of high losses when the fund's growth decreases significantly.

VI. The Final Rule: Risk-Based Assessment System for Large Insured Depository Institutions

A. Overview of the Large Bank Risk-Based Assessment System

The final rule amends the assessment system applicable to large insured depository institutions to better capture risk at the time the institution assumes the risk, to better differentiate risk among large insured depository institutions during periods of good economic and banking conditions based on how they would fare during periods of stress or economic downturns, and to better take into account the losses that the FDIC may incur if a large insured depository institution fails. Except where noted, the final rule adopts the proposals in the Large Bank NPR.

The final rule eliminates risk categories and the use of long-term debt issuer ratings for calculating risk-based assessments for large institutions.[51] Instead, assessment rates will be calculated using a scorecard that combines CAMELS ratings and certain forward-looking financial measures to assess the risk a large institution poses to the DIF. One scorecard will apply to most large institutions and another to institutions that are structurally and operationally complex or that pose unique challenges and risk in the case of failure (highly complex institutions).[52]

The scorecards use quantitative measures that are readily available and useful in predicting a large institution's long-term performance.[53] These measures are meant to differentiate risk based on how large institutions would fare during periods of economic stress. Experience during the recent crisis shows that periods of stress reveal risks that remained hidden during periods of prosperity. As discussed in the Large Bank NPR and shown in Chart 3, over the 2005 to 2008 period, the new measures were useful in predicting performance of large institutions in 2009.

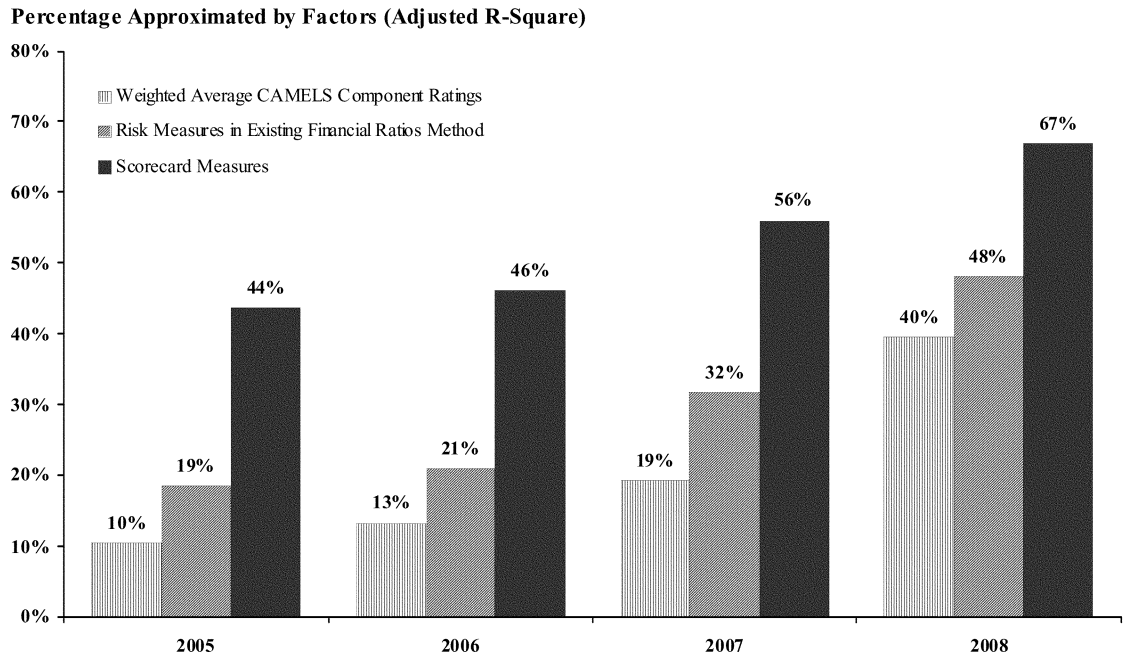
[51] Dodd-Frank requires all federal agencies to review and modify regulations to remove reliance upon credit ratings and substitute an alternative standard of creditworthiness. Public Law 111–203, § 939A, 124 Stat. 1376, 1886 (15 U.S.C. 78o–7 note).

[52] A "highly complex institution" is defined as: (1) An IDI (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters that either is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or is controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters, and (2) a processing bank or trust company. A processing bank or trust company is an insured depository institution whose last three years' non-lending interest income, fiduciary revenues, and investment banking fees, combined, exceed 50 percent of total revenues (and its last three years fiduciary revenues are non-zero), whose total fiduciary assets total $500 billion or more and whose total assets for at least four consecutive quarters have been $10 billion or more. The final rule clarifies that only U.S. holding companies come within the definition of highly complex institution. Control has the same meaning as in section 3(w)(5) of the FDI Act. See 12 USC 1813(w)(5)(2001). A credit card bank is defined as a bank for which credit card plus securitized receivables exceed 50 percent of assets plus securitized receivables. The final rule makes a technical change to the definition of a highly complex institution to avoid including certain non-complex institutions by requiring, among other things, that for an institution to be defined as a processing bank or trust company (one type of highly complex institution), it must have total fiduciary assets total $500 billion or more.

[53] Most of the data are publicly available, but data elements to compute four scorecard measures—higher-risk assets, top 20 counterparty exposures, the largest counterparty exposure, and criticized/classified items—are not. The FDIC proposes that insured depository institutions provide these data elements in the Consolidated Reports of Condition and Income (Call Report) or the Thrift Financial Report (TFR) beginning with the second quarter of 2011.

Chart 3

Various Measures' Ability to Predict Current Expert Judgment Risk Ranking[54,55]



B. Scorecard for Large Insured Depository Institutions (Other Than Highly Complex Insured Depository Institutions)

The scorecard for large institutions (other than highly complex institutions) produces two scores—a performance score and a loss severity score—that are combined and converted to an initial base assessment rate.

The performance score measures a large institution's financial performance and its ability to withstand stress. To arrive at a performance score, the scorecard combines a weighted average of CAMELS component ratings and certain financial measures into a single performance score between 0 and 100.

The loss severity score measures the relative magnitude of potential losses to the FDIC in the event of a large institution's failure. The scorecard converts a loss severity measure into a loss severity score between 0 and 100. The loss severity score is converted into a loss severity factor that ranges between 0.8 and 1.2.

Multiplying the performance score by the loss severity factor produces a combined score (total score) that can be up to 20 percent higher or lower than the performance score. Any score less than 30 will be set at 30; any score greater than 90 will be set at 90. As discussed below, the FDIC will have a limited ability to alter a large institution's total score based on quantitative or qualitative measures not captured in the scorecard. The resulting total score after adjustment cannot be less than 30 or more than 90. The total score is converted to an initial base assessment rate.

Table 7 shows scorecard measures and components, and their relative contribution to the performance score or loss severity score. Scorecard measures (other than the weighted average CAMELS rating) are converted to scores between 0 and 100 based on minimum and maximum cutoff values for each measure. A score of 100 reflects the highest risk and a score of 0 reflects the lowest risk. A value reflecting lower risk than the cutoff value receives a score of 0. A value reflecting higher risk than the cutoff value receives a score of 100. A risk measure value between the minimum and maximum cutoff values converts linearly to a score between 0 and 100, which is rounded to 3 decimal points. The weighted average CAMELS rating is converted to a score between 25 and 100 where 100 reflects the highest risk and 25 reflects the lowest risk.

Most of the minimum and maximum cutoff values are equal to the 10th and 90th percentile values for each measure, which are derived using data on large institutions over a ten-year period beginning with the first quarter of 2000 through the fourth quarter of 2009—a period that includes both good and bad economic times.[56] [57]

Appendix B describes how each scorecard measure is converted to a score.

[54] The rank ordering of risk for large institutions as of the end of 2009 (based on a consensus view of staff analysts) is largely based on the information available through the FDIC's Large Insured Depository Institution (LIDI) program. Large institutions that failed or received significant government support over the period are assigned the worst risk ranking and are included in the statistical analysis. Appendix 1 to the NPR describes the statistical analysis.

[55] The percentage approximated by factors is based on the statistical model for that particular year. Actual weights assigned to each scorecard measure are largely based on the average coefficients for 2005 to 2008, and do not equal the weight implied by the coefficient for that particular year (See Appendix 1 to the NPR).

[56] Appendix 2 shows selected percentile values of each scorecard measure over this period. The detailed results of the statistical analysis used to select risk measures and the weights are also provided. An online calculator is available on the FDIC's Web site to allow institutions to determine how their assessment rates will be calculated under this final rule.

[57] Some cutoff values have been updated since the Large Bank NPR to reflect data updates.

TABLE 7—SCORECARD FOR LARGE INSTITUTIONS

	Scorecard measures and components	Measure weights (percent)	Component weights (percent)
P	Performance Score		
P.1	Weighted Average CAMELS Rating	100	30
P.2	Ability to Withstand Asset-Related Stress		50
	Tier 1 Leverage Ratio	10	
	Concentration Measure	35	
	Core Earnings/Average Quarter-End Total Assets *	20	
	Credit Quality Measure	35	
P.3	Ability to Withstand Funding-Related Stress		20
	Core Deposits/Total Liabilities	60	
	Balance Sheet Liquidity Ratio	40	
L	Loss Severity Score		
L.1	Loss Severity Measure		100

* Average of five quarter-end total assets (most recent and four prior quarters).

1. Performance Score

The performance score for large institutions is a weighted average of the scores for three components: (1) Weighted average CAMELS rating score; (2) ability to withstand asset-related stress score; and (3) ability to withstand funding-related stress score. Table 7 shows the weight given to the score for each of these components.

a. Weighted Average CAMELS Rating Score

To compute the weighted average CAMELS rating score, a weighted average of the large institution's CAMELS component ratings is first calculated using the weights shown in Table 8. These weights are the same as the weights used in the financial ratios method, which is currently used to determine assessment rates for all insured depository institutions in Risk Category I.[58]

TABLE 8—WEIGHTS FOR CAMELS COMPONENT RATINGS

CAMELS component	Weight (percent)
C	25
A	20
M	25
E	10
L	10
S	10

A weighted average CAMELS rating converts to a score that ranges from 25 to 100. A weighted average rating of 1 equals a score of 25 and a weighted average of 3.5 or greater equals a score of 100. Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100. The score increases at an increasing rate as the weighted average CAMELS rating increases. Appendix B describes how the FDIC converts a weighted average CAMELS rating to a score.

b. Ability To Withstand Asset-Related Stress Score

The score for the ability to withstand asset-related stress is a weighted average of the scores for the four measures that the FDIC finds most relevant to assessing a large institution's ability to withstand such stress; they are:

- Tier 1 leverage ratio;
- Concentration measure (the greater of the higher-risk assets to the sum of Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score);
- The ratio of core earnings to average quarter-end total assets; and
- Credit quality measure (the greater of the criticized and classified items to the sum of Tier 1 capital and reserves score or the underperforming assets to the sum of Tier 1 capital and reserves score).

In general, these measures proved to be the most statistically significant measures of a large institution's ability to withstand asset-related stress, as described in Appendix 2. Appendix A describes these measures.

The method for calculating the scores for the Tier 1 leverage ratio and the ratio of core earnings to average quarter-end total assets is described in Appendix B.

The score for the concentration measure is the greater of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score.[59] Appendix B describes the conversion of these ratios to scores. Appendix C describes the ratios.

The score for the credit quality measure is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score.[60] Appendix B describes conversion of the credit quality measure into a credit quality score.

Table 9 shows the ability to withstand asset related stress measures, gives the cutoff values for each measure and shows the weight assigned to the measure to derive a score. Appendix B describes how each of the risk measures is converted to a score between 0 and 100 based upon the minimum and maximum cutoff values.[61]

[58] 12 CFR part 327, Subpt. A, App. A (2010).

[59] The ratio of higher-risk assets to Tier 1 capital and reserves gauges concentrations that are currently deemed to be high risk. The growth-adjusted portfolio concentration measure does not solely consider high-risk portfolios, but considers most loan portfolio concentrations, along with growth of the concentration.

[60] The criticized and classified items ratio measures commercial credit quality while the underperforming assets ratio is often a better indicator for consumer portfolios.

[61] Most of the minimum and maximum cutoff values for each risk measure equal the 10th and 90th percentile values of the measure among large institutions based upon data from the period between the first quarter of 2000 and the fourth quarter of 2009. The 10th and 90th percentiles are not used for the higher-risk assets to Tier 1 capital and reserves ratio and the criticized and classified items ratio due to data availability. Data on the higher-risk assets to Tier 1 capital and reserves ratio are available consistently since second quarter 2008, while criticized and classified items are available consistently since first quarter 2007. The maximum cut off value for the higher-risk assets to Tier 1 capital and reserves measure is close to but does not equal the 75th percentile. The maximum cutoff value for the criticized and classified items ratio is close to but does not equal the 80th percentile value. These alternative cutoff values are based on recent experience since earlier data is unavailable. Appendix 2 includes information regarding the percentile values for each risk measure.

TABLE 9—CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

Measures of the ability to withstand asset-related stress	Cutoff values		Weights (percent)
	Minimum (percent)	Maximum (percent)	
Tier 1 Leverage Ratio	6	13	10
Concentration Measure	.....	.....	35
Higher-Risk Assets to Tier 1 Capital and Reserves; or	0	135	.....
Growth-Adjusted Portfolio Concentrations	4	56	.....
Core Earnings/Average Quarter-End Total Assets*	0	2	20
Credit Quality Measure	.....	.....	35
Criticized and Classified Items/Tier 1 Capital and Reserves; or	7	100	.....
Underperforming Assets/Tier 1 Capital and Reserves	2	35	.....

* Average of five quarter-end total assets (most recent and four prior quarters).

The score for each measure is multiplied by its respective weight and the resulting weighted score is summed to arrive at a score for an ability to withstand asset-related stress, which can range from 0 to 100.

Table 10 illustrates how the score for the ability to withstand asset-related stress is calculated for a hypothetical bank, Bank A.

TABLE 10—CALCULATION OF BANK A'S ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

Measures of the ability to withstand asset-related stress	Value (percent)	Score *	Weight (percent)	Weighted score
Tier 1 Leverage Ratio	6.98	86.00	10	8.60
Concentration Measure	.....	100.00	35	35.00
Higher Risk Assets/Tier 1 Capital and Reserves; or	162.00	100.00	.....	.....
Growth-Adjusted Portfolio Concentrations	43.62	76.19	.....	.....
Core Earnings/Average Quarter-End Total Assets	0.67	66.50	20	13.30
Credit Quality Measure	.....	100.00	35	35.00
Criticized and Classified Items/Tier 1 Capital and Reserves; or	114.00	100.00	.....	.....
Underperforming Assets/Tier 1 Capital and Reserves	34.25	97.73	.....	.....
Total ability to withstand asset-related stress score	.....	.....	.....	91.90

* In the example, scores are rounded to two decimal points for Bank A. In actuality, scores will be rounded to three decimal places.

Bank A's higher risk assets to Tier 1 capital and reserves score (100.00) is higher than its growth-adjusted portfolio concentration score (76.19). Thus, the higher risk assets to Tier 1 capital and reserves score is multiplied by the 35 percent weight to get a weighted score of 35.00 and the growth-adjusted portfolio concentrations score is ignored. Similarly, Bank A's criticized and classified items to Tier 1 capital and reserves score (100.00) is higher than its underperforming assets to Tier 1 capital and reserves score (97.73). Therefore, the criticized and classified items to Tier 1 capital and reserves score is multiplied by the 35 percent weight to get a weighted score of 35.00 and the underperforming assets to Tier 1 capital and reserves score is ignored. These weighted scores, along with the weighted scores for the Tier 1 leverage ratio (8.60) and core earnings to average quarter-end total assets ratio (13.30), are added together, resulting in the ability to withstand asset-related stress score of 91.90.

c. Comments on Ability To Withstand Asset-Related Stress

The FDIC received a number of comments that relate to scorecard measures used to assess an institution's ability to withstand asset-related stress.

Criticized and Classified Items Ratio

The FDIC received several comments suggesting that the FDIC discount or exclude certain items, such as purchased credit impaired (PCI) loans or performing restructured loans, from the definition of criticized and classified items, since these items do not result in the same degree of loss as other, typical, classified and criticized items.

The FDIC acknowledges that losses associated with various items included in criticized and classified items may vary, depending on collateral, the degree of previous loss recognition and other factors. However, relying on greater detail on these types of assets would increase, not decrease, the complexity of the model and would require additional data elements to be collected from institutions. The FDIC believes that the added complexity and burden of collecting more detailed data outweighs the additional benefit, but, relying upon data obtained through the examination process, will consider the idiosyncratic and qualitative factors that may influence potential losses associated with various criticized and classified items in determining whether to apply a large bank adjustment (discussed below).

One commenter cautioned against potential inconsistencies in reported criticized and classified items, particularly when examination classifications differ from an institution's internal classifications. For the purpose of the large bank scorecard, criticized and classified items are defined as those items that the institution has internally identified as Special Mention, Substandard, Doubtful, or Loss on its own management reports or items identified as Special Mention or worse by an institution's primary federal regulator.

Appendix A of the final rule describes the definition.

Growth-Adjusted Portfolio Concentrations Ratio

Several commenters stated that the growth-adjusted portfolio concentrations ratio unfairly captures growth attributed to the Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140, and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R), which are one-time accounting adjustments (FAS 166/167).

FDIC analysis shows that asset growth associated with FAS 166/167 guidelines has a one-time effect on only a small number of institutions. Weighing the benefit of collecting additional information on the effect of FAS 166/167 against the added complexity and associated data collection burden, the FDIC has concluded that it would be better to consider the effect of FAS 166/167 as it determines whether to apply a large bank adjustment.

Higher-Risk Assets Ratio

A number of commenters stated that certain elements of the higher-risk assets ratio contain data items that are not Call Report items and could lead to inconsistent reporting among banks. As proposed in the Large Bank NPR, the FDIC will collect all data elements, other than CAMELS ratings, directly from institutions through the Call Reports and TFRs. These measures are defined in Appendix A.

The FDIC also received a number of comments suggesting changes in the definition of leveraged lending, subprime loans and nontraditional mortgages, which are used in the higher-risk assets ratio. These comments are discussed below.

Leveraged Lending

Several commenters asked for a change in the definition of leveraged lending to exclude small business loans, real estate loans or loans for buyout, acquisition, and recapitalization that do not otherwise meet the definition of leveraged lending. Commenters also cautioned against using specific "bright line" financial metrics to determine whether a loan is leveraged. In addition, commenters stated that regular updating of loan data for the purposes of identifying leveraged loans is burdensome and costly.

The FDIC agrees that several of these comments have merit. For the purpose of this rule, leveraged loans exclude all real estate loans and those small business loans with an original amount of $1 million or less.[62] The FDIC believes that some bright-line metrics are necessary to ensure consistency in reporting among institutions; however, the final rule removes the total liabilities to asset ratio test from the definition of leveraged loans.[63] Any other commercial loan or security, regardless of the stated purpose, will be considered leveraged only if it meets one of the two remaining criteria described in Appendix C.

Subprime Loans

Several commenters asked that the definition of a subprime loan be revised to comport with the 2001 Interagency Guidance and to exclude loans that have deteriorated subsequent to origination, citing the burden and cost associated with regular updating of borrower information.[64] One commenter argued against referencing the FICO score in defining subprime loans, stating that the rule should not endorse a specific brand. A couple of commenters cautioned about potential inconsistencies among institutions in identifying subprime loans.

To reduce any potential burden, the final rule defines subprime loans as those that meet the criteria for being subprime at origination or refinancing. The definition in the final rule deletes the reference to FICO and other credit bureau scores. While the FDIC is aware that originators often use credit scores in the loan underwriting process, the FDIC has decided not to use a credit score threshold as a potential characteristic of a subprime borrower. Such a definition would require reliance on credit scoring models that are controlled by credit rating bureaus; thus, the models may change materially at the discretion of the credit rating bureaus. There also may be inconsistencies among the various models that the credit rating bureaus use. Research has consistently found that borrower credit history is among the most important predictors of default.[65] The final rule focuses on credit history as a characteristic of a subprime borrower, but, to avoid underreporting of subprime loans, the definition now includes loans that an institution itself identifies as subprime based upon similar borrower characteristics. Appendix A describes the definition.

Nontraditional Mortgages

A number of commenters argued that interest-only loans should not be included in the definition of non-traditional mortgages for the higher risk concentration measure, given that the risk they pose differs from other non-traditional mortgages. The FDIC disagrees. The FDIC believes that interest-only loans generally exhibit higher risk than traditional amortizing mortgage loans, particularly in a stressful economic environment. The FDIC understands that qualitative factors such as credit underwriting or credit administration are important in determining potential losses associated with interest-only loans; however, these factors can influence potential losses for any type of loan and, in addition, are not easily measurable systematically. The FDIC will consider these qualitative factors in determining whether to apply a large bank adjustment.

One comment asked for a specific definition of a teaser rate mortgage. For the purpose of the final rule, a teaser-rate mortgage is a mortgage with a discounted initial rate and lower payments for part of the mortgage term.

Averaging the Credit Quality and Concentration Scores

A number of commenters suggested that the FDIC should average the two concentration scores and the two credit quality scores, rather than using the greater of the two scores in each case. The FDIC disagrees. The two credit quality ratios capture credit risk in different ways: the criticized and classified items ratio is more relevant for the performance of an institution's commercial portfolio; the underperforming asset ratio is more relevant for the performance of an institution's retail portfolio. Depending on an institution's asset composition, one measure may better capture the institution's credit quality than another. Therefore, averaging the two scores could understate credit quality concerns.

Similarly, the two concentration ratios are designed to capture different concentration risk. The high-risk asset concentration ratio captures the risk associated with concentrated lending in high-risk areas that directly contributed to the failure of a number of large

[62] The original amount is defined in Appendix C.

[63] The remaining tests for determining whether a loan is leveraged are consistent with the Office of the Comptroller of the Currency's Handbook, *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf.*

[64] FDIC Press Release PR–9–2001 01–31–2001, *http://www.fdic.gov/news/news/press/2001/pr0901a.html.*

[65] *See, e.g.,* Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit,* August 2007, *http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf.*

institutions during the recent economic downturn. The FDIC recognizes, however, that other types of concentrations may lead to failure in the future, particularly if the concentrations are accompanied by rapid growth, which is what the growth-adjusted portfolio concentration ratio is designed to measure. Recent experience shows that many institutions that subsequently experienced problems eased underwriting standards and expanded beyond their traditional areas of expertise to grow rapidly. Since these two concentration ratios are designed to capture different types of concentration risk, averaging the two scores could reduce the scorecard's ability to differentiate risk.

d. Ability To Withstand Funding-Related Stress Score

The ability to withstand funding-related stress component contains two measures that are most relevant to assessing a large institution's ability to withstand such stress—a core deposits to total liabilities ratio and a balance sheet liquidity ratio, which measures the amount of highly liquid assets needed to cover potential cash outflows in the event of stress.[66] [67] These ratios are significant in predicting a large institution's long-term performance in the statistical test described in Appendix 2. Appendix A describes these risk measures. Appendix B describes how each of these measures is converted to a score between 0 and 100.

The score for the ability to withstand funding-related stress is the weighted average of the scores for two measures. Table 11 shows the cutoff values and weights for these measures. Weights assigned to each of these two risk measures are based on a statistical analysis described in Appendix 2.

TABLE 11—CUTOFF VALUES AND WEIGHTS TO CALCULATE ABILITY TO WITHSTAND FUNDING-RELATED STRESS SCORE

Measures of the ability to withstand funding-related stress	Cutoff values		Weight (percent)
	Minimum (percent)	Maximum (percent)	
Core Deposits/Total Liabilities	5	87	60
Balance Sheet Liquidity Ratio	7	243	40

Table 12 illustrates how the score for the ability to withstand funding-related stress for hypothetical bank, Bank A, is calculated.

TABLE 12—CALCULATION OF BANK A'S SCORE FOR ABILITY TO WITHSTAND FUNDING-RELATED STRESS

Measures of the ability to withstand funding-related stress	Value (percent)	Score *	Weight (percent)	Weighted score
Core Deposits/Total Liabilities	60.25	32.62	60	19.57
Balance Sheet Liquidity Ratio	69.58	73.48	40	29.39
Total ability to withstand funding-related stress score	.....	.....	.....	48.96

* In the example, scores are rounded to two decimal points for Bank A. In actuality, scores will be rounded to three decimal places.

e. Comments on the Ability To Withstand Funding-Related Stress

Definition of Core Deposits and Brokered Deposits

Several commenters stated that the definitions for core deposits and brokered deposits as used in the core deposits to total liabilities ratio are outdated and should be revised. These commenters stated that reciprocal deposits, affiliated broker-dealer sweeps and long-term brokered deposits are stable deposits, and therefore, should be included in the definition of core deposits. In the final rule, for this purpose, core deposits exclude all brokered deposits. However, as mentioned in Section III, Dodd-Frank mandated that the FDIC conduct a study to evaluate the existing brokered deposit and core deposit definitions. The FDIC will examine the definition in light of the completed study and will consider changes then, if appropriate.

Balance Sheet Liquidity Ratio

Several commenters argued that unencumbered agency mortgage-backed securities (MBSs) should be included as liquid assets in calculating the balance sheet liquidity ratio, arguing that they are a reliable source of liquidity. These commenters also pointed to the Basel liquidity measures, which include unencumbered agency MBSs as highly liquid assets, with appropriate haircuts.

The FDIC believes that an institution's ability to withstand funding-related stress can be best measured by highly liquid assets that can be readily converted to cash with little or no loss in value, relative to potential short-term funding outflows. While agency MBSs are generally liquid, they are not as highly liquid as other assets included as liquid assets in the definition of balance sheet liquidity ratio, particularly given the greater interest rate risk inherent in these securities.

One commenter noted that deposits owned by a parent should not be subjected to the same runoff rates as other deposits for the purpose of the balance sheet liquidity ratio, given that these deposits behave similarly to long-term unsecured debt. The same comment was made in the context of loss severity. The FDIC disagrees. Parent companies, as well as other creditors, can have incentives to withdraw deposits from a troubled institution. Deposits are not equivalent to long-term unsecured debt.

[66] The final rule clarifies that all securities included in the definition of liquid assets are measured at fair value.

[67] The deposit runoff assumptions proposed in the Large Bank NPR were based on the Basel liquidity measure. The final rule modified deposit runoff rates for the balance sheet liquidity ratio to reflect changes issued by the Basel Committee on Banking Supervision in its December 2010 document, "Basel III: International framework for liquidity risk measurement, standards and monitoring," *http://www.bis.org/publ/bcbs188.pdf.*

Calculation of Performance Score

The scores for the weighted average CAMELS rating, the ability to withstand asset-related stress component, and the ability to withstand funding-related stress component are multiplied by their respective weights and the results are summed to arrive at the performance score. The performance score cannot be less than 0 or more than 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the higher risk. In the example in Table 13, Bank A's performance score would be 70.92, assuming that Bank A's score for its weighted average CAMELS score of 50.60, which results from a weighted average CAMELS rating of 2.2.

TABLE 13—PERFORMANCE SCORE FOR BANK A

Performance score components	Weight (percent)	Score *	Weighted score
Weighted Average CAMELS Rating	30	50.60	15.18
Ability to Withstand Asset-Related Stress	50	91.90	45.95
Ability to Withstand Funding-Related Stress	20	48.96	9.79
Total Performance Score	.....	.....	70.92

* In the example, scores are rounded to two decimal points for Bank A. In actuality, scores will be rounded to three decimal places.

2. Loss Severity Score

The loss severity score is based on a loss severity measure that estimates the relative magnitude of potential losses to the FDIC in the event of a large institution's failure. The loss severity measure applies a standardized set of assumptions—based on recent failures—regarding liability runoffs and the recovery value of asset categories to calculate possible losses to the FDIC. (Appendix D describes the calculation of this measure.) Asset loss rate assumptions are based on estimates of recovery values for insured depository institutions that either failed or came close to failure. Run-off assumptions are based on the actual experience of insured depository institutions that either failed or came close to failure during the 2007 through 2009 period.

The loss severity measure is a quantitative measure that is derived from readily available data. Appendix A defines this measure. Appendix B describes how the loss severity measure is converted to a loss severity score between 0 and 100. Table 14 shows cutoff values for the loss severity measure. The loss severity score cannot be less than 0 or more than 100.

TABLE 14—CUTOFF VALUES TO CALCULATE LOSS SEVERITY SCORE

Measure of loss severity	Cutoff values	
	Minimum (percent)	Maximum (percent)
Loss Severity	0	28

In the example in Table 15, Bank A's loss severity measure is 23.62 percent, which represents potential losses in the event of Bank A's failure relative to its domestic deposits. This measure would result in a loss severity score of 84.36.

TABLE 15—LOSS SEVERITY SCORE FOR BANK A

Measure of loss severity	Ratio (percent)	Score *
Potential Losses/Total Domestic Deposits (Loss severity measure)	23.62	84.36

* In the example, the score is rounded to two decimal points for Bank A. In actuality, scores will be rounded to three decimal places.

3. Comments on Loss Severity Score

In general, commenters did not oppose including loss severity in the initial base assessment rate calculation. However, many commenters questioned the proposed assumptions regarding the loss rates applied to various asset types and regarding liability runoff rates, arguing that they were too harsh or lacked empirical support. These comments are discussed below.

a. Loss Rate Assumptions

Some commenters disagreed with the loss rates assigned to various asset categories and argued that:

- The FDIC should not discount asset values;
- Using the same loss rates for all institutions is not reasonable and the loan-to-value ratio should be considered in determining the loss rate;
- A zero loss rate should be applied to government-guaranteed loans;
- Loss rates applied to acquired loans booked at fair value are too high; and
- Asset categories (*e.g.,* leases, first-lien home equities, all other loans, all other assets) should be further subdivided to provide the less-risky assets within those categories a lower loss rate.

The FDIC disagrees with these comments. The current value of an institution's assets is not a good indicator of the recovery value of these assets in the event of failure. To estimate potential recovery values, the loss severity measure applies a standardized set of loss rates to various asset categories, based on independent valuations obtained by the FDIC in 2009 on assets expected to be taken into receivership.

The FDIC recognizes that collateral value, the loan-to-value ratio and the existence of a government guarantee may have a bearing on recovery rates; however, data on collateral value and other risk mitigants are not systematically available for all institutions. Also, government guarantees may or may not reduce the FDIC's risk of loss, depending on the agency issuing the guaranty and the transferability of the guaranty in the event of failure. In these cases, the FDIC will consider available information on collateral and other risk mitigants, including the materiality of guarantees, in determining whether to apply a large bank adjustment.

The FDIC does not believe the loss severity measure should systematically try to adjust for loans booked at fair value. Loans booked at fair value are typically not material for most institutions, and, even when they are, their recovery values in the event of failure are often well below current fair values.

The FDIC recognizes that the loss rates applied to broad categories of assets may overstate or understate potential losses, depending on the composition of those assets. However, the FDIC believes that further subdividing asset categories introduces greater complexity and is not practical without imposing undue burden.

b. Runoff Assumptions

A number of commenters stated that the proposed insured deposit growth assumption used in the loss severity measure is too high and unrealistic given the supervisory constraint that will restrict growth as an institution nears failure. The FDIC agrees. Runoff and growth assumptions for deposits proposed in the Large Bank NPR were based on the actual experience of eleven large institutions that failed between 2007 and 2009 over a two-year period leading up to their failure. The FDIC has re-estimated deposit runoffs based on data for all insured depository institutions that failed since 2007—including small institutions, which were added to improve the robustness of the analysis—over a one-year period leading up to their failure, and reduced the growth rate for insured deposits from 32 percent to 10 percent while increasing the run-off rate for uninsured deposits from 28.6 percent to 58 percent.[68] The changes are primarily due to shorter time-to-failure, not the inclusion of small institutions in the sample. The FDIC believes that data based on shorter time-to-failure (one year) better reflect changes in deposit composition experienced by failed institutions as they approach failure.

c. Foreign Deposits

Several commenters stated that runoff and ring-fencing assumptions applied to foreign deposits are excessive and unsupported. Foreign deposits are not insured by the FDIC and would be treated as unsecured claims in a receivership. Unsecured claims in a receivership rarely receive any payment since they have a lower priority than domestic deposits. The FDIC believes that these deposits were more stable during the recent crisis primarily because of extraordinary government action, both by the U.S. and European governments. In the absence of "too big to fail" perceptions or policies, the FDIC believes that foreign deposits are more likely to run off than domestic deposits. Moreover, foreign governments may ring-fence assets to protect these deposits and reduce their own losses. As a result, the final rule retains the Large Bank NPR's assumptions regarding foreign deposit runoff.

d. Noncore Funding

In the Large Bank NPR, the FDIC proposed including a noncore funding ratio in the loss severity scorecard as a potential proxy for franchise value. Most commenters stated that the noncore funding ratio should not be included because this risk is considered elsewhere. They also questioned the weight assigned to the measure. The FDIC continues to believe that potential franchise value is an important factor to consider in the overall assessment of loss severity. However, given that liability composition is explicitly considered in the loss severity measure, the final rule eliminates the noncore funding ratio from the loss severity scorecard. Instead, qualitative factors that affect an institution's franchise value will be considered in determining whether to apply a large bank adjustment.

e. Capital

One commenter stated that assuming capital will fall to 2 percent and that assets will be reduced pro rata is unreasonable. The FDIC disagrees. Path-to-failure assumptions are a necessary feature of a potential loss severity calculation, particularly for institutions that are not close to failure. Using assumptions regarding reductions in specific categories of assets introduces significant complexity. The FDIC believes that the pro rata assumption is both reasonable and practical. This may be an area, however, that lends itself to further research and analysis as the FDIC continues to pursue improvements to the risk-based assessment system.

C. Scorecard for Highly Complex Institutions

As mentioned above, those institutions that are structurally and operationally complex or that pose unique challenges and risks in case of failure have a different scorecard with measures tailored to the risks these institutions pose.

The structure and much of the scorecard for a highly complex institution are, however, similar to the scorecard for other large institutions. Like the scorecard for other large institutions, the scorecard for highly complex institutions contains a performance score and a loss severity score. Table 16 shows the measures and components and their relative contribution to a highly complex institution's performance score and loss severity score. As with the scorecard for large institutions, most of the minimum and maximum cutoff values for each scorecard measure used in the highly complex institution's scorecard equal the 10th and 90th percentile values of the particular measure among these institutions based upon data from the period between the first quarter of 2000 and the fourth quarter of 2009.[69]

TABLE 16—SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS

	Measures and components	Measure weights (percent)	Component weights (percent)
P	Performance Score		
P.1	Weighted Average CAMELS Rating	100	30
P.2	Ability to Withstand Asset-Related Stress		50
	Tier 1 Leverage Ratio	10	
	Concentration Measure	35	
	Core Earnings/Average Quarter-End Total Assets	20	
	Credit Quality Measure and Market Risk Measure	35	
P.3	Ability to Withstand Funding-Related Stress		20
	Core Deposits/Total Liabilities	50	
	Balance Sheet Liquidity Ratio	30	
	Average Short-Term Funding/Average Total Assets	20	
L	Loss Severity Score		
L.1	Loss Severity Measure		100

[68] This updated analysis also resulted in changing the runoff assumptions for Federal funds purchased and for repurchase agreements. These new assumptions are set forth in Appendix D.

[69] Three measures used in the highly complex institution's scorecard (that are not used in the scorecard for other large institutions) do not use the 10th and 90th percentile values as cutoffs due to lack of historical data. The cutoffs for these measures are based partly upon recent experience; the maximum cutoffs range from approximately the 75th through the 78th percentile of these measures among only highly complex institutions.

1. Performance Score

The performance score for highly complex institutions is the weighted average of the scores for three components: weighted average CAMELS rating score, weighted at 30 percent; ability to withstand asset-related stress score, weighted at 50 percent; and ability to withstand funding-related stress score, weighted at 20 percent.

a. Weighted Average CAMELS Rating Score

The score for the weighted average CAMELS rating for highly complex institutions is derived in the same manner as in the scorecard for other large institutions.

b. Ability To Withstand Asset-Related Stress Score

The ability to withstand asset-related stress score contains measures that the FDIC finds most relevant to assessing a highly complex institution's ability to withstand such stress:

- Tier 1 leverage ratio;
- Concentration measure (the greatest of the higher-risk assets to the sum of Tier 1 capital and reserves score, the top 20 counterparty exposure to the sum of Tier 1 capital and reserves score, or the largest counterparty exposure to the sum of Tier 1 capital and reserves score);
- The ratio of core earnings to average quarter-end total assets;
- Credit quality measure (the greater of the criticized and classified items to the sum of Tier 1 capital and reserves score or the underperforming assets to the sum of Tier 1 capital and reserves score) and market risk measure (the weighted average of the four-quarter trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score).

Two of the four measures used to assess a highly complex institution's ability to withstand asset-related stress (the Tier 1 leverage ratio and the core earnings to average quarter-end total assets ratio) are determined in the same manner as in the scorecard for other large institutions. However, the method used to calculate the score for the other remaining measures—the concentration measure and the credit quality and market risk measure—differ and are discussed below.

Concentration Measure

As in the scorecard for large institutions, the concentration measure for highly complex institutions includes the higher-risk assets to Tier 1 capital and reserves ratio described in Appendix C. However, the concentration measure in the highly complex institution's scorecard considers the top 20 counterparty exposures to Tier 1 capital and reserves ratio and the largest counterparty exposure to Tier 1 capital and reserves ratio instead of the growth-adjusted portfolio concentrations measure used in the scorecard for large institutions. The highly complex institution's scorecard uses these measures because recent experience shows that the concentration of a highly complex institution's exposures to a small number of counterparties—either through lending or trading activities—significantly increases the institution's vulnerability to unexpected market events. The FDIC uses the top 20 counterparty exposure and the largest counterparty exposure to capture this risk.

Credit Quality Measure and Market Risk Measure Scores

As in the scorecard for large institutions, the ability to withstand asset-related stress component includes a credit quality measure. However, the highly complex institution scorecard also includes a market risk measure that considers trading revenue volatility, market risk capital, and level 3 trading assets. All three risk measures are calculated relative to a highly complex institution's Tier 1 capital and multiplied by their respective weights to calculate the score for the market risk measure. All three risk measures can be calculated using data from an insured depository institution's quarterly Call Reports or TFRs. The FDIC believes that combining these three risk measures better captures a highly complex institution's market risk than any single measure.

The trading revenue volatility ratio measures the sensitivity of a highly complex institution's trading revenue to market volatility. The market risk capital ratio uses historical experience to estimate the effect on capital of potential losses in the trading portfolio due to market volatility.[70] However, this ratio may not be a good measure of market risk when an institution holds a large volume of hard-to-value trading assets. Therefore, the level 3 trading assets ratio is included as an indicator of the volume of hard-to-value trading assets held by an institution.

The FDIC recognizes that the relevance of credit risk and market risk in assessing a highly complex institution's vulnerability to stress depends on an institution's asset composition. A highly complex institution with a significant amount of trading assets can be as risky as an institution that focuses on lending even though the primary source of risk may differ. In order to treat both types of institutions fairly, the FDIC allocates an overall weight of 35 percent between the credit risk measure and the market risk measure. The allocation will vary depending on the ratio of average trading assets to the sum of average securities, loans, and trading assets (the trading asset ratio) as follows:

- Weight for Credit Quality Measure = (1 − Trading Asset Ratio) * 0.35.
- Weight for Market Risk Measure = Trading Asset Ratio * 0.35.

Table 18 shows cutoff values and weights for the ability to withstand asset-related stress measures.

TABLE 18—CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

Measures of the ability to withstand asset-related stress	Cutoff values		Market risk measures	Weight
	Minimum (percent)	Maximum (percent)		
Tier 1 Leverage Ratio	6	13		10%.
Concentration Measure				35%.
Higher Risk Assets/Tier 1 Capital and Reserves	0	135		
Top 20 Counterparty Exposure/Tier 1 Capital and Reserves; or	0	125		

[70] Market risk capital is defined in Appendix C of Part 325 of the FDIC Rules and Regulations,. *http://www.fdic.gov/regulations/laws/rules/2000-4800.html#fdic2000appendixctopart325.*

TABLE 18—CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE—Continued

Measures of the ability to withstand asset-related stress	Cutoff values		Market risk measures	Weight
	Minimum (percent)	Maximum (percent)		
Largest Counterparty Exposure/Tier 1 Capital and Reserves.	0	20		
Core Earnings/Average Quarter-end Total Assets	0	2		20%.
Credit Quality Measure*				35% * (1 − Trading Asset Ratio).
Criticized and Classified Items to Tier 1 Capital and Reserves; or	7	100		
Underperforming Assets/Tier 1 Capital and Reserves	2	35		
Market Risk Measure*				35% * Trading Asset Ratio.
Trading Revenue	0	2	60	
Volatility/Tier 1 Capital				
Market Risk Capital/Tier 1 Capital	0	10	20	
Level 3 Trading Assets/Tier 1 Capital	0	35	20	

*Combined, the credit quality measure and the market risk measure will be assigned a 35 percent weight. The relative weight of each of the two measures will depend on the ratio of average trading assets to sum of average securities, loans and trading assets (trading asset ratio).

c. Ability To Withstand Funding-Related Stress Score

The score for the ability to withstand funding-related stress contains three measures that are most relevant to assessing a highly complex institution's ability to withstand such stress—a core deposits to total liabilities ratio, a balance sheet liquidity ratio, and an average short-term funding to average total assets ratio.

Two of the measures (the core deposits to total liabilities ratio and the balance sheet liquidity ratio) in the ability to withstand funding-related stress score are determined in the same manner as in the scorecard for large institutions, although their weights differ. The FDIC has added the average short-term funding to average total assets ratio to the ability to withstand funding-related stress component of the highly complex institution scorecard because experience during the recent crisis shows that heavy reliance on short-term funding significantly increases a highly complex institution's vulnerability to unexpected adverse developments in the funding market.

Table 19 shows cutoff values and weights for the ability to withstand funding-related stress measures.

TABLE 19—CUTOFF VALUES AND WEIGHTS TO CALCULATE ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

Measures of the ability to withstand funding-related stress	Cutoff values		
	Minimum (percent)	Maximum (percent)	Weight (percent)
Core Deposits/Total Liabilities	5	87	50
Balance Sheet Liquidity Ratio	7	243	30
Average Short-term Funding/Average Total Assets	2	19	20

d. Calculating the Performance Score

To calculate the performance score for a highly complex institution, the scores for the weighted average CAMELS score, the ability to withstand asset-related stress score, and the ability to withstand funding-related stress score are multiplied by their respective weights and the results are summed to arrive at the performance score.

2. The Loss Severity Score

The loss severity score for highly complex institutions is calculated the same way as the loss severity score for other large institutions.

D. Total Score

1. Calculating the Total Score

The method for calculating the total score for large institutions and highly complex institutions is the same. Once the performance and loss severity scores are calculated for these institutions, their scores are converted to a total score. Each institution's total score is calculated by multiplying its performance score by a loss severity factor as follows:

First, the loss severity score is converted into a loss severity factor that ranges from 0.8 (score of 5 or lower) to 1.2 (score of 85 or higher). Scores at or below the minimum cutoff of 5 receive a loss severity factor of 0.8 and scores at or above the maximum cutoff of 85 receive a loss severity factor of 1.2. Again, a linear interpolation is used to convert loss severity scores between the cutoffs into a loss severity factor. The conversion is made using the following formula:

Loss Severity Factor = 0.8 + [0.005 * (Loss Severity Score − 5]

For example, if Bank A's loss severity score is 68.57, its loss severity factor would be 1.12, calculated as follows:

0.8 + (0.005 * (68.57 − 5)) = 1.12

Next, the performance score is multiplied by the loss severity factor to produce a total score (total score = performance score * loss severity factor). Since the loss severity factor ranges from 0.8 to 1.2, the total score can be up to 20 percent higher or lower than the performance score but cannot be less than 30 or more than 90. For

example, if Bank A's performance score is 69.33 and its loss severity factor is 1.12, its total score would be calculated as follows:

69.33 * 1.12 = 77.65

Extreme values for certain risk measures make an institution more vulnerable to risk, which the FDIC believes should be addressed on a bank-by-bank basis. To do this, the FDIC can adjust a large institution's or highly complex institution's total score, up or down, by a maximum of 15 points, based upon significant risk factors that are not adequately captured in the scorecard. The FDIC will use a process similar to the current large bank adjustment to determine the amount of the adjustment to the total score.[71] The resulting total score cannot be less than 30 or more than 90. This adjustment is discussed in more detail below.

2. Comments on Total Score

Some commenters stated that limiting the effect of the loss severity score on the total score to 20 percent has no support and that loss severity should have a greater effect to account for institutions that pose little to no risk to the insurance fund. The FDIC believes that loss severity should be considered in determining an insured institution's deposit assessments; this rulemaking is the first time that the FDIC has explicitly incorporated loss severity in the calculation of an institution's assessment rate. While the FDIC believes that the loss severity measure provides a reasonable risk ranking of institutions' potential losses to the DIF, the FDIC believes that it is prudent at this time to incorporate this measure in a limited way and evaluate it further before increasing its effect on the assessment rate. Furthermore, the loss severity measure does not yet incorporate off-balance sheet obligations, complex funding structures and other qualitative factors that can have a significant effect on DIF losses in the event of failure.

E. Initial Base Assessment Rate

A large institution or highly complex institution with a total score of 30 will pay the minimum initial base assessment rate and a large institution or highly complex institution with a total score of 90 will pay the maximum initial base assessment rate; for total scores between 30 and 90, initial base assessment rates will rise at an increasing rate as the total score increases.[72] [73] The initial base assessment rate (in basis points) is calculated using the following formula: [74]

$$Rate = Minimum\ Rate + \left[\left(\left(1.4245 \times \left(\frac{Score}{100}\right)^{3}\right) - 0.0385\right) \times \left(Maximum\ Rate - Minimum\ Rate\right)\right]$$

where Rate is the initial base assessment rate (expressed in basis points), Maximum Rate is the maximum initial base assessment rate then in effect (expressed in basis points), and Minimum Rate is the minimum initial base assessment rate then in effect (expressed in basis points).

The calculation of an initial base assessment rate is based on an approximated statistical relationship between large institutions' total scores and their estimated three-year cumulative failure probabilities, as shown in Appendix 3.

Chart 4 illustrates the initial base assessment rate for a range of total scores, assuming minimum and maximum initial base assessment rates of 5 basis points and 35 basis points, respectively.

[71] 12 CFR 327.9(d)(4) (2010).

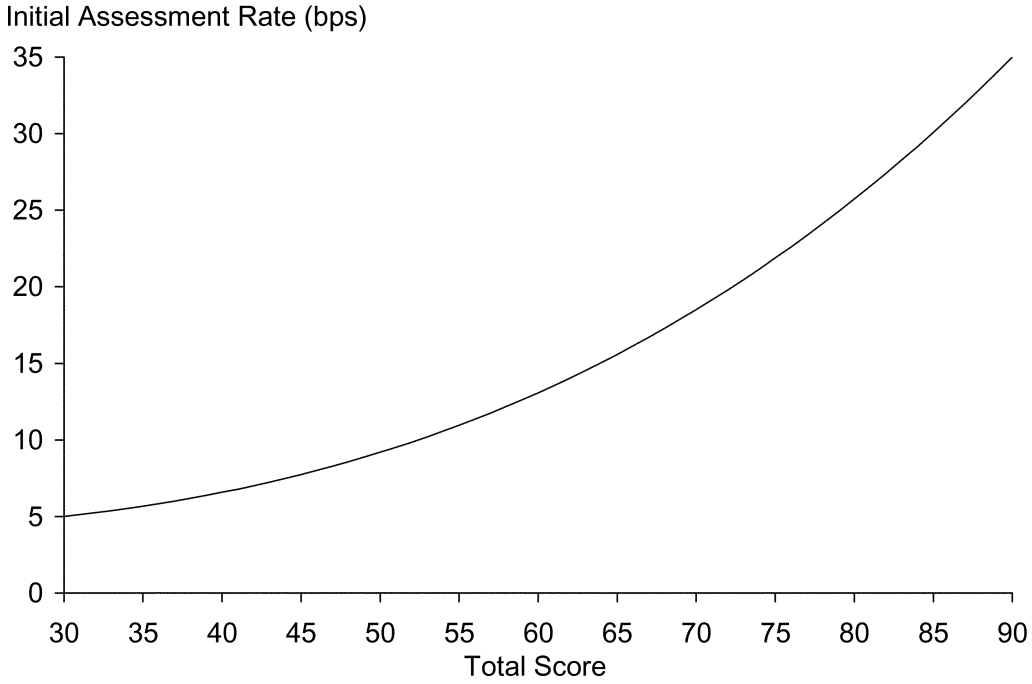
[72] Scores of 30 and 90 equal about the 13th and about the 99th percentile values, respectively, based on scorecard results as of first quarter 2006 through fourth quarter 2007.

[73] The assessment rates that the FDIC will apply to large and highly complex insured depository institutions pursuant to this final rule are set out in Section IV above.

[74] The initial base assessment rate (in basis points) will be rounded to two decimal points.

Chart 4

Initial Base Assessment Rates



The initial base assessment rate of a large or highly complex institution can be adjusted as a result of the unsecured debt adjustment, the depository institution debt adjustment, and the brokered deposit adjustment, as discussed above.

F. Large Bank Adjustment to the Total Score

1. Adjustment to Total Score for Large or Highly Complex Institutions

The FDIC will retain the ability to adjust the total score for large institutions and highly complex institutions by a maximum of 15 points, up or down, based upon significant risk factors that are not captured in the scorecards. While the scorecards should improve the relative risk ranking of large institutions, the FDIC believes that it is important that it have the ability to consider idiosyncratic factors or other relevant risk factors that are not adequately captured in the scorecards. This large bank adjustment will be similar to the assessment rate adjustment that large institutions and insured branches of foreign banks within Risk Category I have been subject to in recent years.[75]

In general, the adjustments to the total score will have a proportionally greater effect on the assessment rate of those institutions with a higher total score since the assessment rate rises at an increasing rate as the total score rises.

In determining whether to make a large bank adjustment, the FDIC may consider such information as financial performance and condition information and other market or supervisory information. The FDIC will also consult with an institution's primary federal regulator and, for state chartered institutions, state banking supervisor.

The FDIC acknowledges the need to clarify its processes for making adjustments to ensure fair treatment and accountability and plans to propose and seek comment on updated guidelines. As noted in the Large Bank NPR, the FDIC will not adjust assessment rates until the updated guidelines are published for comment and approved by the Board. In addition, the FDIC will publish aggregate statistics on adjustments each quarter.

Similar to the current adjustment process, the FDIC will notify a large institution or highly complex institution before an upward adjustment to the institution's assessment rate takes effect, so that the institution will have an opportunity to respond to the FDIC's rationale for proposing an upward adjustment. An adjustment will be implemented only after considering the institution's response and any subsequent changes to the inputs or other risk factors that informed the FDIC's decision.[76]

2. Comments on the Large Bank Adjustment

Several commenters voiced concern that the large bank adjustment is disproportionately large, given the detail and complexity of the scorecard. Two commenters questioned the need for any large bank adjustment. Two commenters recommended that the adjustment should be only used to lower an institution's score.

The FDIC disagrees. Based on statistical analysis, the FDIC believes that the scorecard will generally improve the relative risk ranking of

[75] 12 CFR 327.9(d)(4) (2010).

[76] The final rule does not affect the procedures or timetable for appealing assessment rates. The procedures and timetable are described on the FDIC's Web site: *http://www.fdic.gov/deposit/insurance/assessments/requests_review.html*.

large institutions, particularly based on their long-term performance. However, the scorecard relies on only a limited number of quantitative ratios and applies a standardized set of assumptions, and it does not consider firm-specific idiosyncratic or qualitative factors that can have significant bearing on an institution's probability of failure or loss given failure. In fact, many commenters criticized the scorecard for not considering qualitative factors such as underwriting, collateral, or other risk mitigants. The FDIC agrees that these qualitative factors should be considered in assessments, and believes that it needs the flexibility to consider them. In addition, the FDIC believes that the complexity and the dynamic nature of many large institutions warrant a large bank adjustment that is significant enough for the FDIC to consider current or future risk factors not adequately captured in the scorecard.

Several commenters maintained that the large bank adjustment is too subjective and not transparent. The FDIC disagrees. Currently, the FDIC determines the large bank adjustment following the process set forth in the guidelines that were adopted in 2007.[77] The guidelines detail broad-based and focused benchmarks used to determine whether the adjustment should be made to an institution's assessment rate and set out adjustment processes. The FDIC consults with an institution's primary federal regulator and notifies the institution one quarter in advance of the FDIC's intent to make an upward adjustment to the institution's rate, so that the institution will have an opportunity to respond and provide additional information. The FDIC implements the adjustment only after considering the response and any subsequent changes to the inputs or other risk factors that informed the FDIC's decision.[78] This process will remain unchanged in this rulemaking. In addition, as proposed in the Large Bank NPR, the FDIC will not adjust a large or highly complex institution's assessment rates until the updated guidelines are published for comment and approved by the Board.

G. Data Sources

1. Data Sources in Final Rule

In most cases, the FDIC will use data that are publicly available to compute scorecard measures. Data elements required to compute four scorecard measures—higher-risk assets, top 20 counterparty exposures, the largest counterparty exposure and criticized and classified items—are gathered during the examination process. Rather than relying on the examination process, the FDIC will collect the data elements for these four scorecard measures directly from each institution. The FDIC anticipates that the necessary changes will be made to Call Reports and TFRs beginning with second quarter of 2011. These data elements will remain confidential.

2. Comments on the Data Sources

A bank commented that the data reported for use in scorecard calculations may not be consistent among banks and is subject to definitional interpretation. The final rule incorporates detailed definitions and industry recommendations for various data elements, which should eliminate any significant inconsistencies among the data collected. Another commenter stated that nonpublic data used in the scorecard may be incorrect. The FDIC will collect all data through the Call Reports and TFRs, and each institution's management will attest to the accuracy of the information.

H. Updating the Scorecard

The FDIC will have the flexibility to update the minimum and maximum cutoff values used in each scorecard annually without further rulemaking as long as the method of selecting cut-off values remains unchanged. The FDIC can add new data for subsequent years to its analysis and can, from time to time, exclude some earlier years from its analysis. Updating the minimum and maximum cutoff values and weights will allow the FDIC to use the most recent data, thereby improving the accuracy of the scorecard method.

If, as a result of its review and analysis, the FDIC concludes that measures should be used to determine risk-based assessments, that the method of additional or alternative selecting cutoff values should be revised, that the weights assigned to the scorecard measures should be recalibrated, or that a new method should be used to differentiate risk among large institutions or highly complex institutions, changes will be made through a future rulemaking.

The data used to calculate scorecard measures for any given quarter will be calculated from the Call Reports and TFRs filed by each insured depository institution as of the last day of the quarter. CAMELS component rating changes will be effective as of the date that the rating change is transmitted to the insured depository institution for purposes of determining assessment rates.[79]

I. Additional Comments

The FDIC received approximately 25 comments related to the Large Bank NPR. Most commenters opposed the rule because they claimed it is not risk-based when combined with the proposed new assessment base, is too complex and is not transparent. Two commenters expressed support for the proposal, including the elimination of long-term debt issuer ratings and risk-based categories for large banks. In addition to the comments described above, responders also commented on other issues discussed below.

1. Risk-Based Assessment System

Some commenters stated that the rule unfairly penalizes large insured depository institutions without demonstrating that they pose greater risk to the DIF. Several commenters argued that the FDIC should lower rates applicable to large banks because the proposed rates, when applied to the new assessment base, increase large banks' assessments and misrepresent the actual risk posed by large banks and, therefore, violate the statutory requirement that the assessment system be risk-based. One commenter argued that large banks should not be penalized with a greater share of overall assessments because large banks caused little of the recent losses to the DIF. Some commenters argued that the assessment rates and the new large bank pricing system result in assessments for small banks that are too low, thus underpricing risk and creating moral hazard.

In the FDIC's view, the final rule preserves and improves the risk-based assessment system. Under the FDI Act, the FDIC's Board of Directors must establish a risk-based assessment system so that a depository institution's deposit insurance assessment is calculated based on the probability that the DIF will incur a loss with respect to the institution (taking into consideration the

[77] 72 FR 27122 (May 14, 2007); *http://edocket.access.gpo.gov/2007/pdf/E7-9196.pdf.*

[78] The final rule does not affect the procedures or timetable for appealing assessment rates. The procedures and timetable are described on the FDIC's Web site: *http://www.fdic.gov/deposit/insurance/assessments/requests_review.html.*

[79] Pursuant to existing supervisory practice, the FDIC does not assign a different component rating from that assigned by an institution's primary federal regulator, even if the FDIC disagrees with a CAMELS component assigned by an institution's primary federal regulator, unless: (1) The disagreement over the component rating also involves a disagreement over a CAMELS composite rating; and (2) the disagreement over the CAMELS composite rating is not a disagreement over whether the CAMELS composite rating should be a 1 or a 2. The FDIC has no plans to alter this practice.

risks attributable to different categories and concentrations of assets, different categories and concentrations of liabilities, and any other relevant factors regarding loss); the likely amount of any loss to the DIF; and the revenue needs of the DIF.

The assessment system complies with this requirement. For a large insured depository institution, the performance score (which explicitly takes into consideration the risks attributable to different categories and concentrations of assets, different categories and concentrations of liabilities, and many other relevant factors regarding loss), the loss severity score, the assessment rate adjustments (the unsecured debt adjustment, the depository institution debt adjustment and the brokered deposit adjustment) and the Dodd-Frank-required assessment base, taken together, reasonably represent both the probability that the DIF will incur a loss with respect to the institution and the likely amount of any such loss.

For a small institution, capital levels and CAMELS ratings (both of which correlate with probability of failure) and, if the institution is well capitalized and well managed, the financial ratios method (which measures the probability that an institution's supervisory CAMELS rating will decline to a CAMELS 3, 4 or 5), combined with the assessment rate adjustments and the new assessment base determine the probability that the DIF will incur a loss with respect to the institution and the likely amount of any such loss.[80]

For several reasons, the FDIC disagrees with any implication that new assessment base mandated by Dodd-Frank is a poorer measure of exposure to loss than domestic deposits. In most instances, when an institution fails, the great majority of its liabilities are insured deposits and secured liabilities, both of which expose the FDIC to loss. Unlike the old assessment base, the new assessment base captures both types of liabilities. In addition, the new assessment base includes other liabilities (uninsured deposits, foreign deposits, and short-term unsecured liabilities) that, in large part, are either paid before the institution fails, reducing the assets available to the DIF to cover losses, or are replaced by insured deposits or secured liabilities. Thus, including short-term unsecured debt and foreign deposits in the assessment base makes sense, since this kind of debt provides no cushion to absorb losses in the event of failure. While Congress also included long-term unsecured debt in the assessment base, the unsecured debt adjustment for long-term debt recognizes that this form of liability provides a cushion to absorb losses ahead of the FDIC in the event of failure.

Using data as of September 30, 2010, under the current assessment system, the 110 large insured depository institutions hold about 70 percent of the assessment base and pay about 70 percent of total assessments. Under the new assessment base and large bank pricing system, they will hold about 78 percent of the assessment base and pay about 79 percent of total assessments.

Congress expressly intended this result and viewed the new assessment base as a better measure of risk than the previous base of domestic deposits:

> Community banks with less than $10 billion in assets rely heavily on customer deposits for funding. This penalizes safe institutions by forcing them to pay deposit insurance premiums above and beyond the risk they pose to the banking system.
>
> Despite making up just 20 percent of the Nation's assets, these community banks contribute 30 percent of the premiums to the deposit insurance fund. At the same time, large banks hold 80 percent of the banking industry's assets. Yet they just pay 70 percent of the premiums. There is no reason for community banks to have to make up this gap.
>
> What we need is a level playing field. * * * Community banks didn't cause the problems. To have them pay more proportionately in FDIC insurance than the big banks do is unfair.
>
> Statements of Senator Hutchison, 156 Cong. Rec. S3154 (May 5, 2010) (Co-Sponsor of Amendment No. 3749, which contains the new assessment base).
>
> We must fix this inequality. That is what the Tester-Hutchison measure does. It will do so by requiring the FDIC to change the assessment base to a more accurate measure: a bank's total assets, less tangible capital. This change will broaden the assessment base and will better measure the risk a bank poses.
>
> A bank's assets include its loans outstanding and securities held. One need only look back to the last 2 years to know those are the assets that are more likely to show a bank's exposure to risk than just plain deposits. It wasn't a bank's deposits that contributed to the financial meltdown. The meltdown was caused by bad mortgages which were packaged into risky mortgage-backed securities which were used to create derivatives. These risky financial instruments and the large institutions that created and held them are what led to our financial crisis.
>
> Statements of Senator Hutchison, 156 Cong. Rec. S3297 (May 6, 2010).[81]

Consequently, the FDIC's assessment system fully comports with the requirements of the FDI Act.[82] Furthermore, the combined effect of the new assessment base, assessment rates and the large bank pricing system does not result in uniformly higher assessments for all large institutions. Based on September 30, 2010 data, for 59 of the 110 large depository institutions, assessments will decline as a result of this combined effect of changes to the assessment base, assessment rates, and the large bank pricing system.

The changes in the assessment system applicable to large insured depository institutions are intended to increase risk differentiation, with safer institutions paying less and riskier ones paying more. As a result of the recent financial crisis, the FDIC is now better able to measure and price for risks that result in failures and losses at large institutions. Higher assessments for some of these institutions are entirely consistent with the express intent of Congress that Dodd-Frank would revise "the FDIC's assessment base for deposit insurance, maintaining the risk-based nature of the assessment structure but transitioning to a broader assessment base for bank premiums based on total assets (minus tangible equity)." U.S. House. *Dodd-Frank Wall Street Reform and Consumer Protection Act, Conference Report* (to Accompany H.R. 4173) (111 H. Rpt. 517).

2. Complexity of the Scorecard

Several commenters, including an industry trade group, criticized the proposed scorecard for being overly complex, making it difficult to make meaningful suggestions on how to improve the model and to accurately predict assessments. An industry trade group stated that, given the overall complexity, the FDIC should demonstrate that the model fairly differentiates risk consistent with the risk-based model for small banks.

The FDIC recognizes that the scorecards remain somewhat complex despite simplifying revisions made in response to comments on the April NPR. However, many large insured depository institutions themselves use a scorecard approach to assess

[80] This system is simpler than the system that will be applied to large insured depository institutions, but large depository institutions are much more complex and pose more complex risks. The FDI Act explicitly allows the FDIC to create different risk-based assessment systems for small and large insured depository institutions. 12 U.S.C. 1817(b)(1)(D).

[81] Similar arguments in favor of the amendment were made by co-sponsor Senator Tester and Senators Johanns and Brown. Statements of Senators Tester, Senator Johanns and Senator Brown, 156 Cong. Rec. S3296, S3297, S3298 (May 6, 2010).

[82] As discussed earlier, the assessment system also takes into account the DIF's revenue needs.

counterparty risk. Moreover, given the complexity of large institutions—both in terms of their operations and activities—the FDIC believes that further simplifying the scorecard would materially reduce its ability to differentiate risk among large institutions.

The FDIC also believes that the measures that best assess a large institution's ability to withstand stress are different from those for small institutions. As discussed above and in the Large Bank NPR, statistical analysis supports the conclusion that scorecard measures predict the long-term performance of large institutions significantly better than the measures included in the small bank model, which is calibrated on the performance of smaller institutions.

3. Weights of the Scorecard Measures

Several commenters suggested that several of the weights assigned to a scorecard measure or a scorecard component should be altered. Scorecard measures and the weights assigned to each measure are based on the statistical analysis of historical performance over the 2005 to 2008 period, focusing on how well these measures predict a large institution's long-term performance. Altering the weights without empirical support would reduce the scorecard's ability to differentiate institution's long-term risk to the DIF and add subjectivity to the model. If future statistical analysis should indicate that the weights assigned to the scorecard measures should be recalibrated, recalibration will be undertaken through rulemaking.

4. Lack of Transparency

Several comments mentioned the lack of transparency in the model, stating that validation is difficult given that all of the information in the scorecard is not publicly available. Another comment stated that the FDIC should periodically seek bids in the reinsurance market (for aggregate and large bank exposures) as an independent verification of the accuracy of the FDIC's deposit insurance pricing.

While most of the measures used to calculate an institution's score are publicly available, a few are not. Nevertheless, each institution has the information it needs to determine the effect of the scorecard on its own assessment. In addition, the FDIC has published the assessment calculator so that a large institution can determine how its assessment rate is calculated and analyze the sensitivity of its assessments to changes in scorecard measure values. Appendix 2 contains the detailed description of the scorecard model, the result of statistical analysis, and the derivation of weights.

The FDIC has previously investigated the possibility of seeking bids in the reinsurance market, and has not found a practicable way to implement it for large institutions.

5. Pro-Cyclicality

Several commenters stated that although the FDIC's stated intent is to reduce pro-cyclicality in the assessment system, the proposed system remains pro-cyclical since many of the scorecard measures, including the CAMELS ratings, would be worse under adverse economic conditions.

In selecting scorecard measures and assigning respective weights, the FDIC relied on statistical analysis that identified how well each measure predicts a large institution's long-term performance. While some of scorecard measures have pro-cyclical features, the FDIC believes that, by focusing on long-term performance, the scorecard, which combines these measures with other more forward looking measures, is less procyclical than the system it replaces.

6. Request to Extend the Comment Period and Delay Implementation

Several commenters stated that the FDIC should extend the comment period and delay implementation of this rulemaking so that the industry can fully analyze the complex proposed system and study the effects that the proposed pricing and assessment base rules would have on the banking industry and the economy. The FDIC believes that the industry has had ample time to analyze the proposal given that the Large Bank NPR is very similar to the April NPR, on which institutions had an opportunity to review and provide comments. Furthermore, delaying implementation would adversely affect those institutions that will benefit from lower assessments under the new system.

7. Ceiling on Dollar Amount of Assessments

Two commenters stated that the dollar amount of assessments paid should not exceed the amount of insured deposits. Another commenter noted that the proposed assessment base and scorecard are causing unreasonably high assessments for banks with small deposit bases.

The FDIC believes that a ceiling on the assessment rate or total assessment is not consistent with the intent of Congress to change the assessment base from one based on deposits to one based on assets. In addition, it could create an incentive for an institution to hold risky assets or to move assets among its various affiliates to avoid higher deposit insurance assessments. Therefore, the final rule does not include a ceiling on the total assessment payment.

8. Cliff Effect

Two commenters criticized the proposal for unfairly punishing institutions that are close to the $10 billion asset threshold, claiming that assessments increase significantly once the institution's assets exceed $10 billion. The same commenters suggested that the FDIC should develop a plan that incrementally increases assessment rates for banks that exceed the $10 billion asset threshold.

The FDIC disagrees. Analysis based on September 2010 data show that under the final rule, as under the existing system, some institutions' assessment rates would increase, while others would decrease, when changing size classification. However, movement from one size category to another will not occur without warning. To reduce potential volatility in assessment rates, a small institution does not become large until it reports assets of $10 billion or greater for four consecutive quarters; similarly, a large institution does not become small until it reports assets of less than $10 billion for four consecutive quarters.

9. Statistical Analysis

Several commenters questioned the validity of the statistical analysis used to support the proposed changes. In particular, commenters expressed concern that the scorecard was calibrated using data on small bank failures and CAMELS downgrades, which would not reflect the risks and behaviors of large institutions. Commenters also noted that, since the analysis only covers the most recent period of heightened bank failures, it may fail to identify or adequately weight factors that are likely to lead to problems in the future. One commenter was critical of including failures in the sample that did not result in a loss to the DIF.

The FDIC agrees that using the recent experience of small banks to determine the scorecard factors and weights would likely result in a system that misprices the risk posed by large institutions. For this reason, the FDIC chose not to use small bank failures or downgrades as the basis for its statistical analysis. Instead, as described in Appendix 1 of the NPR, the risk measures included in the performance score and the weights assigned to those measures were generally based on results from a

regression (OLS) model using FDIC expert judgment rankings of large institutions. In addition, the FDIC tested the robustness of scorecard measures in predicting a large institution's long-term performance using a logistic regression model that estimates the ability of those same measures to predict whether a large institution would fail or receive significant government support prior to year-end 2009. The analysis included institutions that failed but did not cause a loss to the DIF in the sample, since these models were used to select measures and assign appropriate weights for the performance score, not the loss severity score.

The FDIC recognizes that any statistical analysis is necessarily backward looking and that risks may arise in the future that are not adequately captured in the scorecard. However, the FDIC feels that the proposed framework is more comprehensive and reduces the likelihood of such an occurrence compared to the current system, which was less effective in capturing the risks that resulted in recent failures. The FDIC believes that the scorecard should allow us to differentiate risk during periods of good economic and banking conditions based on how institutions would fare during periods of economic stress. To achieve that goal, the FDIC focused on risk measures that best predicted how institutions fared during the period of most recent stress using the data during the period of favorable economic conditions.

A few commenters suggested that regression results provided in Appendix 1 of the Large Bank NPR actually undermine support for the performance score factors. In particular, one commenter stated that the estimated OLS coefficients for several ratios had the wrong sign, and concluded that the regression was mis-specified. Further, the commenter stated that the relationship between the expert judgment rankings and true risk to the DIF was unsupported. Another commenter stated that Chart 2.1 in Appendix 2 to the Large Bank NPR (showing the relationship between total scores and failures) demonstrates that the scorecard does a poor job of discriminating between failures and non-failures, and should, therefore, be abandoned until a more robust model is developed.

The FDIC disagrees with this assessment. As described in Appendix B to this final rule, the FDIC normalized all scorecard measures into a score that ranges between 0 and 100—0 indicating the lowest risk and 100 indicating the highest risk, before conducting the statistical analysis—both OLS and logistic regression. Once normalized in such a way, all scorecard measures should be and were positively correlated with risk, that is, a high score indicates high risk and a low score indicates low risk, and the relative difference in coefficients can be easily converted to weights.

In addition, Chart 3.1 in Appendix 3 to this final rule shows that large institutions with a total score in the top decile as of year-end 2006 represented a disproportionately high percentage of failures between 2006 and 2009. Given that the performance score factors and weights were largely calibrated to the FDIC's expert judgment rankings, this result also provides indirect support for a relationship between the FDIC's expert view and actual risk to.

VII. Effective Date

Except as specifically noted above, the final rule will take effect for the quarter beginning April 1, 2011, and will be reflected in the invoices for assessments due September 30, 2011. The FDIC has considered the possibility of making the application of the new assessment base, the revised assessment rates, and the changes to the assessment rate adjustments retroactive to passage of Dodd-Frank. However, as this rule details, implementation of Dodd-Frank requires that a number of changes be made to the Call Report and TFR that render a retroactive application operationally infeasible. Additionally, retroactively applying these changes would introduce significant legal complexity as well as unacceptable levels of litigation risk. The FDIC is committed to implementing Dodd-Frank in the most expeditious manner possible and is contemporaneously pursuing necessary changes to the Call Report and TFR. The effective date is contingent upon these changes being made; if there is a delay in changing the Call Report and TFR, the effective date of this rule may be delayed.

VIII. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), each federal agency must prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule,[83] or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[84] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of "rule" for purposes of the RFA.[85] The final rule relates to the rates imposed on insured depository institutions for deposit insurance, to the risk-based assessment system components that measure risk and weigh that risk in determining an insured depository institution's assessment rate and to the assessment base on which rates are charged. Consequently, a regulatory flexibility analysis is not required. Nevertheless, the FDIC is voluntarily undertaking a regulatory flexibility analysis.

As of September 30, 2010, of the 7,770 insured commercial banks and savings associations, there were 4,229 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.,* institutions with $175 million or less in assets).

The final rule will adopt the Dodd-Frank definition of assessment base and alter assessment rates and the adjustments to those rates at the same time that the new assessment base takes effect. Under this part of the rule, 99 percent of small institutions will be subject to lower assessments. In effect, the rule will decrease small institution assessments by an average of $10,320 per quarter and will alter the present distribution of assessments by reducing the percentage of the assessments borne by small institutions. As of September 30, 2010, small institutions, as that term is defined for purposes of the RFA, actually accounted for 3.7 percent of total assessments. Also as of that date, but applying the new assessment rates against an estimate of the new assessment base, small institutions would have accounted for 2.4 percent of the total cost of insurance assessments.

Other parts of the final rule will progressively lower assessment rates when the reserve ratio reaches 1.15 percent, 2 percent and 2.5 percent. Pursuant to section 605(b) of the RFA, the FDIC certifies that the rule will not have a significant economic effect on small entities unless and until the DIF reserve ratio exceeds specific thresholds of 1.15, 1.5, 2, and 2.5 percent. The reserve ratio is unlikely to reach these levels for many years. When it does, the overall effect of the rule will be positive for entities of all sizes. All entities, including small entities, will receive a net benefit as a result of lower assessments paid. The rate reductions in the rule should not alter the distribution of the assessment burden between small entities and all others. It is difficult to realistically quantify the benefit at the

[83] 5 U.S.C. 604.

[84] *See* 5 U.S.C. 605(b).

[85] *See* 5 U.S.C. 601.

present time. However, the initial magnitude of the benefit (when the reserve ratio reaches 1.15 percent) is likely to be less than a 2 percent increase in after-tax income and less than a 20 basis point increase in capital.

The portion of the final rule that relates to the assessment system applicable to large insured depository institutions applies only to institutions with $10 billion or greater in total assets. Consequently, small institutions will experience no significant economic impact as the result of this portion of the final rule.

B. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) Public Law 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. Ch. 3501 *et seq.*) are contained in the final rule.

D. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand. No comments addressing this issue were received.

E. The Treasury and General Government Appropriation Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

For the reasons set forth in the preamble the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 2. Amend § 327.4 by revising paragraphs (c) and (f) to read as follows:

§ 327.4 Assessment rates.

* * * * *

(c) *Requests for review.* An institution that believes any assessment risk assignment provided by the Corporation pursuant to paragraph (a) of this section is incorrect and seeks to change it must submit a written request for review of that risk assignment. An institution cannot request review through this process of the CAMELS ratings assigned by its primary federal regulator or challenge the appropriateness of any such rating; each federal regulator has established procedures for that purpose. An institution may also request review of a determination by the FDIC to assess the institution as a large, highly complex, or a small institution (§ 327.9(e)(3)) or a determination by the FDIC that the institution is a new institution (§ 327.9(f)(5)). Any request for review must be submitted within 90 days from the date the assessment risk assignment being challenged pursuant to paragraph (a) of this section appears on the institution's quarterly certified statement invoice. The request shall be submitted to the Corporation's Director of the Division of Insurance and Research in Washington, DC, and shall include documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance and Research (or designee) or the Director of the Division of Supervision and Consumer Protection (or designee) or any successor divisions, as appropriate, shall promptly notify the institution in writing of his or her determination of whether a change is warranted. If the institution requesting review disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

* * * * *

(f) *Effective date for changes to risk assignment.* Changes to an insured institution's risk assignment resulting from a supervisory ratings change become effective as of the date of written notification to the institution by its primary federal regulator or state authority of its supervisory rating (even when the CAMELS component ratings have not been disclosed to the institution), if the FDIC, after taking into account other information that could affect the rating, agrees with the rating. If the FDIC does not agree, the FDIC will notify the institution of the FDIC's supervisory rating; resulting changes to an insured institution's risk assignment become effective as of the date of written notification to the institution by the FDIC.

* * * * *

■ 3. Revise § 327.5 to read as follows:

§ 327.5 Assessment base.

(a) *Assessment base for all insured depository institutions.* Except as provided in paragraphs (b), (c), and (d) of this section, the assessment base for an insured depository institution shall equal the average consolidated total assets of the insured depository institution during the assessment period minus the average tangible equity of the insured depository institution during the assessment period.

(1) *Average consolidated total assets defined and calculated.* Average consolidated total assets are defined in the schedule of quarterly averages in the Consolidated Reports of Condition and Income, using either a daily averaging method or a weekly averaging method as described in paragraphs (a)(1)(i) or (ii) of this section. The amounts to be reported as daily averages are the sum of the gross amounts of consolidated total assets for each calendar day during the quarter divided by the number of calendar days in the quarter. The amounts to be reported as weekly averages are the sum of the gross amounts of consolidated total assets for each Wednesday during the quarter divided by the number of Wednesdays in the quarter. For days that an office of the reporting institution (or any of its subsidiaries or branches) is closed (e.g., Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day will be used. An office is considered closed if there are no transactions posted to the general ledger as of that date. For institutions that begin operating during the calendar quarter, the amounts to be reported as daily averages are the sum of the gross amounts of consolidated total assets for each calendar day the institution was

operating during the quarter divided by the number of calendar days the institution was operating during the quarter.

(i) *Institutions that must report average consolidated total assets using a daily averaging method.* All insured depository institutions that report $1 billion or more in quarter-end consolidated total assets on their March 31, 2011 Consolidated Report of Condition and Income or Thrift Financial Report (or successor report), and all institutions that become insured after March 31, 2011, shall report average consolidated total assets as of the close of business for each day of the calendar quarter.

(ii) *Institutions that may report average consolidated total assets using a weekly averaging method.* All insured depository institutions that report less than $1 billion in quarter-end consolidated total assets on their March 31, 2011, Consolidated Report of Condition and Income or Thrift Financial Report may report average consolidated total assets as an average of the balances as of the close of business on each Wednesday during the calendar quarter, or may at any time opt permanently to report average consolidated total assets on a daily basis as set forth in paragraph (a)(1)(i) of this section. Once an institution that reports average consolidated total assets using a weekly average reports average consolidated total assets equal to or greater than $1 billion for two consecutive quarters, it shall permanently report average consolidated total assets using daily averaging starting in the next quarter.

(iii) *Mergers and consolidations.* The average calculation of the assets of the surviving or resulting institution in a merger or consolidation shall include the assets of all the merged or consolidated institutions for the days in the quarter prior to the merger or consolidation, whether reported by the daily or weekly method.

(2) *Average tangible equity defined and calculated.* Tangible equity is defined as Tier 1 capital.

(i) *Calculation of average tangible equity.* Except as provided in paragraph (a)(2)(ii) of this section, average tangible equity shall be calculated using monthly averaging. Monthly averaging means the average of the three month-end balances within the quarter.

(ii) *Alternate calculation of average tangible equity.* Institutions that report less than $1 billion in quarter-end consolidated total assets on their March 31, 2011 Consolidated Reports of Condition and Income or Thrift Financial Reports may report average tangible equity using an end-of-quarter balance or may at any time opt permanently to report average tangible equity using a monthly average balance. An institution that reports average tangible equity using an end-of-quarter balance and reports average daily or weekly consolidated assets of $1 billion or more for two consecutive quarters shall permanently report average tangible equity using monthly averaging starting in the next quarter. Newly insured institutions shall report using monthly averaging.

(iii) *Calculation of average tangible equity for the surviving institution in a merger or consolidation.* For the surviving institution in a merger or consolidation, Tier 1 capital shall be calculated as if the merger occurred on the first day of the quarter in which the merger or consolidation occurred.

(3) *Consolidated subsidiaries*—(i) *Reporting for insured depository institutions with consolidated subsidiaries that are not insured depository institutions.* For insured institutions with consolidated subsidiaries that are not insured depository institutions, assets, including assets eliminated in consolidation, shall be calculated using a daily or weekly averaging method, corresponding to the daily or weekly averaging requirement of the parent institution. The Consolidated Reports of Condition and Income instructions in effect for the quarter for which data is being reported shall govern calculation of the average amount of subsidiaries' assets, including those assets eliminated in consolidation. An insured depository institution that reports average tangible equity using a monthly averaging method and that has subsidiaries that are not insured depository institutions shall use monthly average reporting for the subsidiaries. The monthly average data for these subsidiaries, however, may be calculated for the current quarter or for the prior quarter consistent with the method used to report average consolidated total assets and in conformity with Consolidated Reports of Condition and Income requirements. Once the method of reporting the subsidiaries' assets and tangible equity is chosen, however (current quarter or prior quarter), insured depository institutions cannot change the reporting method from quarter to quarter. An institution that reports consolidated assets and tangible equity using data for the prior quarter may switch to concurrent reporting on a permanent basis.

(ii) *Reporting for insured depository institutions with consolidated insured depository subsidiaries.* Insured depository institutions that consolidate with other insured depository institutions for financial reporting purposes shall report for the parent and for each subsidiary individually, daily average consolidated total assets or weekly average consolidated total assets, as appropriate under paragraph (a)(1)(i) or (ii) above, and tangible equity, without consolidating their insured depository institution subsidiaries into the calculations. Investments in insured depository institution subsidiaries should be included in total assets using the equity method of accounting.

(b) *Assessment base for banker's banks*—(1) *Bankers bank defined.* A banker's bank for purposes of calculating deposit insurance assessments shall meet the definition of banker's bank as that term is used in 12 U.S.C. 24. Banker's banks that have funds from government capital infusion programs (such as TARP and the Small Business Lending Fund), and stock owned by the FDIC resulting from banks failures, as well as non-bank-owned stock resulting from equity compensation programs, are not thereby excluded from the definition of banker's banks.

(2) *Self-certification.* Institutions that meet the requirements of paragraph (b)(1) of this section shall so certify to that effect each quarter on the Consolidated Reports of Condition and Income or Thrift Financial Report or successor report.

(3) *Assessment base calculation for banker's banks.* A banker's bank shall pay deposit insurance assessments on its assessment base as calculated in paragraph (a) of this section provided that it conducts 50 percent or more of its business with entities other than its parent holding company or entities other than those controlled (control has the same meaning as in section 3(w)(5) of the FDI Act) either directly or indirectly by its parent holding company. The assessment base will exclude the average (daily or weekly depending on how the institution calculates its average consolidated total assets) amount of reserve balances passed through to the Federal Reserve, the average amount of reserve balances held at the Federal Reserve for its own account (including all balances due from the Federal Reserve as described in the instructions to line 4 of Schedule RC–A of the Consolidated Report of Condition and Income as of December 31, 2010), and the average amount of the institution's federal funds sold, but in no case shall the amount excluded exceed the sum of the bank's average amount of total deposits of commercial

banks and other depository institutions in the United States and the average amount of its federal funds purchased.

(c) *Assessment base for custodial banks*—(1) *Custodial bank defined.* A custodial bank for purposes of calculating deposit insurance assessments shall be an insured depository institution with previous calendar-year trust assets (fiduciary and custody and safekeeping assets, as described in the instructions to Schedule RC–T of the Consolidated Report of Condition and Income as of December 31, 2010) of at least $50 billion or an insured depository institution that derived more than 50 percent of its total revenue (interest income plus non-interest income) from trust activity over the previous calendar year.

(2) *Assessment base calculation for custodial banks.* A custodial bank shall pay deposit insurance assessments on its assessment base as calculated in paragraph (a) of this section, but the FDIC will exclude from that assessment base the daily or weekly average (depending on how the bank reports its average consolidated total assets) of all asset types described in the instructions to lines 34, 35, 36, and 37 of Schedule RC–R of the Consolidated Report of Condition and Income as of December 31, 2010 with a Basel risk weighting of 0 percent, regardless of maturity, plus 50 percent of those asset types described in lines 34, 35, 36, and 37 of Schedule RC–R as of December 31, 2010 with a Basel risk weighting of 20 percent regardless of maturity subject to the limitation that the daily or weekly average value of these assets cannot exceed the daily or weekly average value of those deposits classified as transaction accounts in the instructions to Schedule RC–E of the Consolidated Report of Condition and Income as of December 31, 2010, and identified by the institution as being directly linked to a fiduciary or custodial and safekeeping account asset.

(d) *Assessment base for insured branches of foreign banks.* Average consolidated total assets for an insured branch of a foreign bank are defined as total assets of the branch (including net due from related depository institutions) in accordance with the schedule of assets and liabilities in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks as of the assessment period for which the assessment is being calculated, but measured using the definition for reporting total assets in the schedule of quarterly averages in the Consolidated Reports of Condition and Income, and calculated using the appropriate daily or weekly averaging method under paragraph (a)(1)(i) or (ii) of this section. Tangible equity for an insured branch of a foreign bank is eligible assets (determined in accordance with § 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries) calculated on a monthly or end-of-quarter basis, according to the branch's size.

(e) *Newly insured institutions.* A newly insured institution shall pay an assessment for the assessment period during which it became insured. The FDIC will prorate the newly insured institution's assessment amount to reflect the number of days it was insured during the period.

■ 4. Revise § 327.6 to read as follows:

§ 327.6 Mergers and consolidations; other terminations of insurance.

(a) *Final quarterly certified invoice for acquired institution.* An institution that is not the resulting or surviving institution in a merger or consolidation must file a report of condition for every assessment period prior to the assessment period in which the merger or consolidation occurs. The surviving or resulting institution shall be responsible for ensuring that these reports of condition are filed and shall be liable for any unpaid assessments on the part of the institution that is not the resulting or surviving institution.

(b) *Assessment for quarter in which the merger or consolidation occurs.* For an assessment period in which a merger or consolidation occurs, consolidated total assets for the surviving or resulting institution shall include the consolidated total assets of all insured depository institutions that are parties to the merger or consolidation as if the merger or consolidation occurred on the first day of the assessment period. Tier 1 capital shall be reported in the same manner.

(c) *Other termination.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution—

(1) *Payment of assessments; quarterly certified statement invoices.* The depository institution whose insured status is terminating shall continue to file and certify its quarterly certified statement invoice and pay assessments for the assessment period its deposits are insured. Such institution shall not be required to certify its quarterly certified statement invoice and pay further assessments after it has paid in full its deposit liabilities and the assessment to the Corporation required to be paid for the assessment period in which its deposit liabilities are paid in full, and after it, under applicable law, goes out of business or transfers all or substantially all of its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments.

(2) *Payment of deposits; certification to Corporation.* When the deposit liabilities of the depository institution have been paid in full, the depository institution shall certify to the Corporation that the deposit liabilities have been paid in full and give the date of the final payment. When the depository institution has unclaimed deposits, the certification shall further state the amount of the unclaimed deposits and the disposition made of the funds to be held to meet the claims. For assessment purposes, the following will be considered as payment of the unclaimed deposits:

(i) The transfer of cash funds in an amount sufficient to pay the unclaimed and unpaid deposits to the public official authorized by law to receive the same; or

(ii) If no law provides for the transfer of funds to a public official, the transfer of cash funds or compensatory assets to an insured depository institution in an amount sufficient to pay the unclaimed and unpaid deposits in consideration for the assumption of the deposit obligations by the insured depository institution.

(3) *Notice to depositors.* (i) The depository institution whose insured status is terminating shall give sufficient advance notice of the intended transfer to the owners of the unclaimed deposits to enable the depositors to obtain their deposits prior to the transfer. The notice shall be mailed to each depositor and shall be published in a local newspaper of general circulation. The notice shall advise the depositors of the liquidation of the depository institution, request them to call for and accept payment of their deposits, and state the disposition to be made of their deposits if they fail to promptly claim the deposits.

(ii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (c)(2)(i) of this section, a certified copy of the public official's receipt issued for the funds shall be furnished to the Corporation.

(iii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (c)(2)(ii) of this section, an affidavit of the publication and of the mailing of the notice to the depositors, together with a copy of the notice and a certified copy of the contract of

assumption, shall be furnished to the Corporation.

(4) *Notice to Corporation.* The depository institution whose insured status is terminating shall advise the Corporation of the date on which it goes out of business or transfers all or substantially all of its assets and liabilities to other institutions or otherwise ceases to be obligated to pay subsequent assessments and the method whereby the termination has been effected.

(d) *Resumption of insured status before insurance of deposits ceases.* If a depository institution whose insured status has been terminated is permitted by the Corporation to continue or resume its status as an insured depository institution before the insurance of its deposits has ceased, the institution will be deemed, for assessment purposes, to continue as an insured depository institution and must thereafter file and certify its quarterly certified statement invoices and pay assessments as though its insured status had not been terminated. The procedure for applying for the continuance or resumption of insured status is set forth in § 303.248 of this chapter.

■ 5. Amend § 327.8 by:

■ A. Removing paragraphs (e) and (f);

■ B. Redesignating paragraphs (g) through (s) as paragraphs (e) through (q) respectively;

■ C. Revising newly redesignated paragraphs (e), (f), (g), (k), (l), (m), (n), (o), and (p); and

■ D. Adding new paragraphs (r), (s), (t), and (u) to read as follows:

§ 327.8 Definitions.

* * * * *

(e) *Small Institution.* An insured depository institution with assets of less than $10 billion as of December 31, 2006, and an insured branch of a foreign institution shall be classified as a small institution. If, after December 31, 2006, an institution classified as large under paragraph (f) of this section (other than an institution classified as large for purposes of § 327.9(e)) reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(f) *Large Institution.* An institution classified as large for purposes of § 327.9(e) or an insured depository institution with assets of $10 billion or more as of December 31, 2006 (other than an insured branch of a foreign bank or a highly complex institution) shall be classified as a large institution. If, after December 31, 2006, an institution classified as small under paragraph (e) of this section reports assets of $10 billion or more in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter.

(g) *Highly Complex Institution.* (1) A highly complex institution is:

(i) An insured depository institution (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters that is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters; or

(ii) A processing bank or trust company.

(2) Control has the same meaning as in section 3(w)(5) of the FDI Act. A U.S. parent holding company is a parent holding company incorporated or organized under the laws of the United States or any State, as the term "State" is defined in section 3(a)(3) of the FDI Act. If, after December 31, 2010, an institution classified as highly complex under paragraph (g)(1)(i) of this section falls below $50 billion in total assets in its quarterly reports of condition for four consecutive quarters, or its parent holding company or companies fall below $500 billion in total assets for four consecutive quarters, the FDIC will reclassify the institution beginning the following quarter. If, after December 31, 2010, an institution classified as highly complex under paragraph (a)(1)(ii) of this section falls below $10 billion in total assets for four consecutive quarters, the FDIC will reclassify the institution beginning the following quarter.

* * * * *

(k) *Established depository institution.* An established insured depository institution is a bank or savings association that has been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

(1) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (k)(2), (3), (4), and (5) of this section and § 327.9(f)(3) and (4), when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

(i) The assets of the established institution, as reported in its report of condition for the quarter ending immediately before the merger, exceeded the assets of the new institution, as reported in its report of condition for the quarter ending immediately before the merger; and

(ii) Substantially all of the management of the established institution continued as management of the resulting or surviving institution.

(2) *Consolidation involving established institutions.* When established institutions consolidate, the resulting institution is an established institution.

(3) *Grandfather exception.* If a new institution merges into an established institution, and the merger agreement was entered into on or before July 11, 2006, the resulting institution shall be deemed to be an established institution for purposes of this part.

(4) *Subsidiary exception.* Subject to paragraph (k)(5) of this section, a new institution will be considered established if it is a wholly owned subsidiary of:

(i) A company that is a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan holding company under the Home Owners' Loan Act, and:

(A) At least one eligible depository institution (as defined in 12 CFR 303.2(r)) that is owned by the holding company has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established; and

(B) The holding company has a composite rating of at least "2" for bank holding companies or an above average or "A" rating for savings and loan holding companies and at least 75 percent of its insured depository institution assets are assets of eligible depository institutions, as defined in 12 CFR 303.2(r); or

(ii) An eligible depository institution, as defined in 12 CFR 303.2(r), that has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established.

(5) *Effect of credit union conversion.* In determining whether an insured depository institution is new or established, the FDIC will include any period of time that the institution was a federally insured credit union.

(l) *Risk assignment.* For all small institutions and insured branches of foreign banks, risk assignment includes assignment to Risk Category I, II, III, or IV, and, within Risk Category I, assignment to an assessment rate or rates. For all large institutions and highly complex institutions, risk assignment includes assignment to an assessment rate or rates.

(m) *Unsecured debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), unsecured debt shall include senior unsecured liabilities and subordinated debt.

(n) *Senior unsecured liability*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), senior unsecured liabilities shall be the unsecured portion of other borrowed money as defined in the quarterly report of condition for the reporting period as defined in paragraph (b) of this section, but shall not include any senior unsecured debt that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program, 12 CFR Part 370.

(o) *Subordinated debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), subordinated debt shall be as defined in the quarterly report of condition for the reporting period; however, subordinated debt shall also include limited-life preferred stock as defined in the quarterly report of condition for the reporting period.

(p) *Long-term unsecured debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), long-term unsecured debt shall be unsecured debt with at least one year remaining until maturity; however, any such debt where the holder of the debt has a redemption option that is exercisable within one year of the reporting date shall not be deemed long-term unsecured debt.

* * * * *

(r) *Parent holding company*—A parent holding company has the same meaning as "depository institution holding company," as defined in § 3(w) of the FDI Act.

(s) *Processing bank or trust company*—A processing bank or trust company is an institution whose last three years' non-lending interest income, fiduciary revenues, and investment banking fees, combined, exceed 50 percent of total revenues (and its last three years fiduciary revenues are non-zero), and whose total fiduciary assets total $500 billion or more, and whose total assets for at least four consecutive quarters have been $10 billion or more.

(t) *Credit Card Bank*—A credit card bank is a bank for which credit card receivables plus securitized receivables exceed 50 percent of assets plus securitized receivables.

(u) *Control*—Control has the same meaning as in section 2 of the Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(2).

■ 6. Revise § 327.9 to read as follows:

§ 327.9 Assessment pricing methods.

(a) *Small institutions*—(1) *Risk Categories.* Each small insured depository institution shall be assigned to one of the following four Risk Categories based upon the institution's capital evaluation and supervisory evaluation as defined in this section.

(i) *Risk Category I.* Small institutions in Supervisory Group A that are Well Capitalized will be assigned to Risk Category I.

(ii) *Risk Category II.* Small institutions in Supervisory Group A that are Adequately Capitalized, and small institutions in Supervisory Group B that are either Well Capitalized or Adequately Capitalized will be assigned to Risk Category II.

(iii) *Risk Category III.* Small institutions in Supervisory Groups A and B that are Undercapitalized, and small institutions in Supervisory Group C that are Well Capitalized or Adequately Capitalized will be assigned to Risk Category III.

(iv) *Risk Category IV.* Small institutions in Supervisory Group C that are Undercapitalized will be assigned to Risk Category IV.

(2) *Capital evaluations.* Each small institution will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income or Thrift Financial Report (or successor report, as appropriate) dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(i) *Well Capitalized.* A Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(ii) *Adequately Capitalized.* An Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized under this paragraph but satisfies each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater.

(iii) *Undercapitalized.* An undercapitalized institution is one that does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (a)(2)(i) and (ii) of this section.

(3) *Supervisory evaluations.* Each small institution will be assigned to one of three Supervisory Groups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information that the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, as appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the Deposit Insurance Fund. The three Supervisory Groups are:

(i) *Supervisory Group "A."* This Supervisory Group consists of financially sound institutions with only a few minor weaknesses;

(ii) *Supervisory Group "B."* This Supervisory Group consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the Deposit Insurance Fund; and

(iii) *Supervisory Group "C."* This Supervisory Group consists of institutions that pose a substantial probability of loss to the Deposit Insurance Fund unless effective corrective action is taken.

(4) *Financial ratios method.* A small insured depository institution in Risk Category I shall have its initial base assessment rate determined using the financial ratios method.

(i) Under the financial ratios method, each of six financial ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to a uniform amount. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base

assessment rate, subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate (resulting in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate), and adjusted for the actual assessment rates set by the Board under § 327.10(f), will equal an institution's assessment rate. The six financial ratios are: Tier 1 Leverage Ratio; Loans past due 30–89 days/gross assets; Nonperforming assets/gross assets; Net loan charge-offs/gross assets; Net income before taxes/risk-weighted assets; and the Adjusted brokered deposit ratio. The ratios are defined in Table A.1 of Appendix A to this subpart. The ratios will be determined for an assessment period based upon information contained in an institution's report of condition filed as of the last day of the assessment period as set out in paragraph (a)(2) of this section. The weighted average of CAMELS component ratings is created by multiplying each component by the following percentages and adding the products: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—10%, Liquidity—10%, and Sensitivity to market risk—10%. The following table sets forth the initial values of the pricing multipliers:

Risk measures *	Pricing multipliers **
Tier 1 Leverage Ratio	(0.056)
Loans Past Due 30–89 Days/Gross Assets	0.575
Nonperforming Assets/Gross Assets	1.074
Net Loan Charge-Offs/Gross Assets	1.210
Net Income before Taxes/Risk-Weighted Assets	(0.764)
Adjusted brokered deposit ratio	0.065
Weighted Average CAMELS Component Rating	1.095

* Ratios are expressed as percentages.
** Multipliers are rounded to three decimal places.

(ii) The six financial ratios and the weighted average CAMELS component rating will be multiplied by the respective pricing multiplier, and the products will be summed. To this result will be added the uniform amount. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter.

(iii) *Uniform amount and pricing multipliers.* Except as adjusted for the actual assessment rates set by the Board under § 327.10(f), the uniform amount shall be:

(A) 4.861 whenever the assessment rate schedule set forth in § 327.10(a) is in effect;

(B) 2.861 whenever the assessment rate schedule set forth in § 327.10(b) is in effect;

(C) 1.861 whenever the assessment rate schedule set forth in § 327.10(c) is in effect; or

(D) 0.861 whenever the assessment rate schedule set forth in § 327.10(d) is in effect.

(iv) *Implementation of CAMELS rating changes—(A) Changes between risk categories.* If, during a quarter, a CAMELS composite rating change occurs that results in a Risk Category I institution moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the supervisory ratings in effect before the change and the financial ratios as of the end of the quarter, subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(f). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(1), (2), and (3), shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS composite rating change occurs that results in an institution moving from Risk Category II, III or IV to Risk Category I, then the financial ratios method shall apply for the portion of the quarter that it was in Risk Category I, subject to adjustment pursuant to paragraphs (d)(1), (2) and (3) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(f). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section shall be determined under the assessment schedule for the appropriate Risk Category.

(B) *Changes within Risk Category I.* If, during a quarter, an institution's CAMELS component ratings change in a way that will change the institution's initial base assessment rate within Risk Category I, the initial base assessment rate for the period before the change shall be determined under the financial ratios method using the CAMELS component ratings in effect before the change, subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate. Beginning on the date of the CAMELS component ratings change, the initial base assessment rate for the remainder of the quarter shall be determined using the CAMELS component ratings in effect after the change, again subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate.

(b) *Large and Highly Complex institutions—(1) Assessment scorecard for large institutions (other than highly complex institutions).* (i) A large institution other than a highly complex institution shall have its initial base assessment rate determined using the scorecard for large institutions.

SCORECARD FOR LARGE INSTITUTIONS

	Scorecard measures and components	Measure weights (percent)	Component weights (percent)
P	Performance Score		
P.1	Weighted Average CAMELS Rating	100	30
P.2	Ability to Withstand Asset-Related Stress		50
	Tier 1 Leverage Ratio	10	
	Concentration Measure	35	
	Core Earnings/Average Quarter-End Total Assets *	20	
	Credit Quality Measure	35	
P.3	Ability to Withstand Funding-Related Stress		20
	Core Deposits/Total Liabilities	60	
	Balance Sheet Liquidity Ratio	40	
L	Loss Severity Score		
L.1	Loss Severity Measure		100

* Average of five quarter-end total assets (most recent and four prior quarters)

(ii) The scorecard for large institutions produces two scores: performance score and loss severity score.

(A) *Performance score for large institutions.* The performance score for large institutions is a weighted average of the scores for three measures: the weighted average CAMELS rating score, weighted at 30 percent; the ability to withstand asset-related stress score, weighted at 50 percent; and the ability to withstand funding-related stress score, weighted at 20 percent.

(1) Weighted average CAMELS rating score. (i) To compute the weighted average CAMELS rating score, a weighted average of an institution's CAMELS component ratings is calculated using the following weights:

CAMELS Component	Weight
C	25%
A	20%
M	25%
E	10%
L	10%
S	10%

(ii) A weighted average CAMELS rating converts to a score that ranges from 25 to 100. A weighted average rating of 1 equals a score of 25 and a weighted average of 3.5 or greater equals a score of 100. Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100. The score increases at an increasing rate as the weighted average CAMELS rating increases. Appendix B of this subpart describes the conversion of a weighted average CAMELS rating to a score.

(*2*) *Ability to withstand asset-related stress score.* (i) The ability to withstand asset-related stress score is a weighted average of the scores for four measures: Tier 1 leverage ratio; concentration measure; the ratio of core earnings to average quarter-end total assets; and the credit quality measure. Appendices A and C of this subpart define these measures.

(ii) The Tier 1 leverage ratio and the ratio of core earnings to average quarter-end total assets are described in Appendix A and the method of calculating the scores is described in Appendix C of this subpart.

(*iii*) The score for the concentration measure is the greater of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score. Both ratios are described in Appendix C.

(*iv*) The score for the credit quality measure is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score.

(*v*) The following table shows the cutoff values and weights for the measures used to calculate the ability to withstand asset-related stress score. Appendix B of this subpart describes how each measure is converted to a score between 0 and 100 based upon the minimum and maximum cutoff values, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

Measures of the ability to withstand asset-related stress	Cutoff values		Weights (percent)
	Minimum (percent)	Maximum (percent)	
Tier 1 Leverage Ratio	6	13	10

CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE—Continued

Measures of the ability to withstand asset-related stress	Cutoff values		Weights (percent)
	Minimum (percent)	Maximum (percent)	
Concentration Measure			35
Higher–Risk Assets to Tier 1 Capital and Reserves; or	0	135	
Growth-Adjusted Portfolio Concentrations	4	56	
Core Earnings/Average Quarter-End Total Assets *	0	2	20
Credit Quality Measure			35
Criticized and Classified Items/Tier 1 Capital and Reserves; or	7	100	
Underperforming Assets/Tier 1 Capital and Reserves	2	35	

* Average of five quarter-end total assets (most recent and four prior quarters).

(*vi*) The score for each measure in the table in paragraph (b)(1)(ii)(A)(2)(v) is multiplied by its respective weight and the resulting weighted score is summed to arrive at the score for an ability to withstand asset-related stress, which can range from 0 to 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

(*3*) *Ability to withstand funding-related stress score.* Two measures are used to compute the ability to withstand funding-related stress score: a core deposits to total liabilities ratio, and a balance sheet liquidity ratio. Appendix A of this subpart describes these measures. Appendix B of this subpart describes how these measures are converted to a score between 0 and 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk. The ability to withstand funding-related stress score is the weighted average of the scores for the two measures. In the following table, cutoff values and weights are used to derive an institution's ability to withstand funding-related stress score:

CUTOFF VALUES AND WEIGHTS TO CALCULATE ABILITY TO WITHSTAND FUNDING-RELATED STRESS SCORE

Measures of the ability to withstand funding-related stress	Cutoff values		Weights (percent)
	Minimum (percent)	Maximum (percent)	
Core Deposits/Total Liabilities	5	87	60
Balance Sheet Liquidity Ratio	7	243	40

(*4*) *Calculation of Performance Score.* In paragraph (b)(1)(ii)(A)(3), the scores for the weighted average CAMELS rating, the ability to withstand asset-related stress, and the ability to withstand funding-related stress are multiplied by their respective weights (30 percent, 50 percent and 20 percent, respectively) and the results are summed to arrive at the performance score. The performance score cannot be less than 0 or more than 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

(B) *Loss severity score.* The loss severity score is based on a loss severity measure that is described in Appendix D of this subpart. Appendix B also describes how the loss severity measure is converted to a score between 0 and 100. The loss severity score cannot be less than 0 or more than 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk. Cutoff values for the loss severity measure are:

CUTOFF VALUES TO CALCULATE LOSS SEVERITY SCORE

Measure of loss severity	Cutoff values	
	Minimum (percent)	Maximum (percent)
Loss Severity	0	28

(C) *Total Score.* The performance and loss severity scores are combined to produce a total score. The loss severity score is converted into a loss severity factor that ranges from 0.8 (score of 5 or lower) to 1.2 (score of 85 or higher). Scores at or below the minimum cutoff of 5 receive a loss severity factor of 0.8, and scores at or above the maximum cutoff of 85 receive a loss severity factor of 1.2. The following linear interpolation converts loss severity scores between the cutoffs into a loss severity factor: (*Loss Severity Factor* = 0.8 + [0.005 * (*Loss Severity Score* − 5)]. The performance score is multiplied by the loss severity factor to produce a total score (total score = performance score * loss severity factor). The total score can be up to 20 percent higher or lower than the performance score but cannot be less than 30 or more than 90. The total score is subject to adjustment, up or down, by a maximum of 15 points, as set forth in paragraph (b)(3) of this section. The resulting total score after adjustment cannot be less than 30 or more than 90.

(D) *Initial base assessment rate.* A large institution with a total score of 30 pays the minimum initial base assessment rate and an institution with a total score of 90 pays the maximum initial base assessment rate. For total

scores between 30 and 90, initial base assessment rates rise at an increasing rate as the total score increases, calculated according to the following formula:

$$Rate = Minimum\ Rate + \left[\left(\left(1.4245 \times \left(\frac{Score}{100}\right)^{3}\right) - 0.0385\right) \times (Maximum\ Rate - Minimum\ Rate)\right]$$

where Rate is the initial base assessment rate (expressed in basis points), Maximum Rate is the maximum initial base assessment rate then in effect (expressed in basis points), and Minimum Rate is the minimum initial base assessment rate then in effect (expressed in basis points). Initial base assessment rates are subject to adjustment pursuant to paragraphs (b)(3), (d)(1), (d)(2), of this section; large institutions that are not well capitalized or have a CAMELS composite rating of 3, 4 or 5 shall be subject to the adjustment at paragraph (d)(3); these adjustments shall result in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate.

(2) *Assessment scorecard for highly complex institutions.* (i) A highly complex institution shall have its initial base assessment rate determined using the scorecard for highly complex institutions.

SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS

	Measures and components	Measure weights (percent)	Component weights (percent)
P	Performance Score		
P.1	Weighted Average CAMELS Rating	100	30
P.2	Ability To Withstand Asset-Related Stress		50
	Tier 1 Leverage Ratio	10	
	Concentration Measure	35	
	Core Earnings/Average Quarter-End Total Assets	20	
	Credit Quality Measure and Market Risk Measure	35	
P.3	Ability To Withstand Funding-Related Stress		20
	Core Deposits/Total Liabilities	50	
	Balance Sheet Liquidity Ratio	30	
	Average Short-Term Funding/Average Total Assets	20	
L	Loss Severity Score		
L.1	Loss Severity		100

(ii) The scorecard for highly complex institutions produces two scores: performance and loss severity.

(A) *Performance score for highly complex institutions.* The performance score for highly complex institutions is the weighted average of the scores for three components: weighted average CAMELS rating, weighted at 30 percent; ability to withstand asset-related stress score, weighted at 50 percent; and ability to withstand funding-related stress score, weighted at 20 percent.

(*1*) *Weighted average CAMELS rating score.* (*i*) To compute the score for the weighted average CAMELS rating, a weighted average of an institution's CAMELS component ratings is calculated using the following weights:

CAMELS Component	Weight
C	25%
A	20%
M	25%
E	10%
L	10%
S	10%

(*ii*) A weighted average CAMELS rating converts to a score that ranges from 25 to 100. A weighted average rating of 1 equals a score of 25 and a weighted average of 3.5 or greater equals a score of 100. Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100. The score increases at an increasing rate as the weighted average CAMELS rating increases. Appendix B of this subpart describes the conversion of a weighted average CAMELS rating to a score.

(*2*) *Ability to withstand asset-related stress score.* (*i*) The ability to withstand asset-related stress score is a weighted average of the scores for four measures:

Tier 1 leverage ratio; concentration measure; ratio of core earnings to average quarter-end total assets; credit quality measure and market risk measure. Appendix A of this subpart describes these measures.

(*ii*) The Tier 1 leverage ratio and the ratio of core earnings to average quarter-end total assets are described in Appendix A and the method of calculating the scores is described in Appendix B of this subpart.

(*iii*) The score for the concentration measure for highly complex institutions is the greatest of the higher-risk assets to the sum of Tier 1 capital and reserves score, the top 20 counterparty exposure to the sum of Tier 1 capital and reserves score, or the largest counterparty exposure to the sum of Tier 1 capital and reserves score. Each ratio is described in Appendix A of this subpart. The method used to convert the concentration measure into a score is described in Appendix C of this subpart.

(*iv*) The credit quality score is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score. The market risk score is the weighted average of three scores—the trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score. All of these ratios are described in Appendix A of this subpart and the method of calculating the scores is described in Appendix B. Each score is multiplied by its respective weight, and the resulting weighted score is summed to compute the score for the market risk measure. An overall weight of 35 percent is allocated between the scores for the credit quality measure and market risk measure. The allocation depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio) as follows:

(*v*) Weight for credit quality score = 35 percent * (1—trading asset ratio); and,

(*vi*) Weight for market risk score = 35 percent * trading asset ratio.

(*vii*) Each of the measures used to calculate the ability to withstand asset-related stress score is assigned the following cutoff values and weights:

CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE THE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

Measures of the ability to withstand asset-related stress	Cutoff values		Market risk measure (percent)	Weights (percent)
	Minimum (percent)	Maximum (percent)		
Tier 1 Leverage Ratio	6	13		10.
Concentration Measure				35.
Higher Risk Assets/Tier 1 Capital and Reserves;	0	135		
Top 20 Counterparty Exposure/Tier 1 Capital and Reserves; or	0	125		
Largest Counterparty Exposure/Tier 1 Capital and Reserves	0	20		
Core Earnings/Average Quarter-end Total Assets	0	2		20.
Credit Quality Measure *				35 * (1 − Trading Asset Ratio).
Criticized and Classified Items to Tier 1 Capital and Reserves; or	7	100		
Underperforming Assets/Tier 1 Capital and Reserves	2	35		
Market Risk Measure *				35 * Trading Asset Ratio.
Trading Revenue Volatility/Tier 1 Capital	0	2	60	
Market Risk Capital/Tier 1 Capital	0	10	20	
Level 3 Trading Assets/Tier 1 Capital	0	35	20	

* Combined, the credit quality measure and the market risk measure are assigned a 35 percent weight. The relative weight of each of the two scores depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio).

(*ix*) The score of each measure is multiplied by its respective weight and the resulting weighted score is summed to compute the ability to withstand asset-related stress score, which can range from 0 to 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

(*3*) *Ability to withstand funding related stress score.* Three measures are used to calculate the score for the ability to withstand funding-related stress: a core deposits to total liabilities ratio, a balance sheet liquidity ratio, and average short-term funding to average total assets ratio. Appendix A of this subpart describes these ratios. Appendix B of this subpart describes how each measure is converted to a score. The ability to withstand funding-related stress score is the weighted average of the scores for the three measures. In the following table, cutoff values and weights are used to derive an institution's ability to withstand funding-related stress score:

CUTOFF VALUES AND WEIGHTS TO CALCULATE ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

Measures of the ability to withstand funding-related stress	Cutoff values		Weights (percent)
	Minimum (percent)	Maximum (percent)	
Core Deposits/Total Liabilities	5	87	50
Balance Sheet Liquidity Ratio	7	243	30
Average Short-term Funding/Average Total Assets	2	19	20

(*4*) *Calculation of Performance Score.* The weighted average CAMELS score, the ability to withstand asset-related stress score, and the ability to withstand funding-related stress score are multiplied by their respective weights (30 percent, 50 percent and 20 percent, respectively) and the results are summed to arrive at the performance score, which cannot be less than 0 or more than 100.

(B) *Loss severity score.* The loss severity score is based on a loss severity measure described in Appendix D of this subpart. Appendix B of this subpart also describes how the loss severity measure is converted to a score between 0 and 100. Cutoff values for the loss severity measure are:

CUTOFF VALUES FOR LOSS SEVERITY MEASURE

Measure of loss severity	Cutoff values	
	Minimum (percent)	Maximum (percent)
Loss Severity	0	28

(C) *Total Score.* The performance and loss severity scores are combined to produce a total score. The loss severity score is converted into a loss severity factor that ranges from 0.8 (score of 5 or lower) to 1.2 (score of 85 or higher). Scores at or below the minimum cutoff of 5 receive a loss severity factor of 0.8, and scores at or above the maximum cutoff of 85 receive a loss severity factor of 1.2. The following linear interpolation converts loss severity scores between the cutoffs into a loss severity factor: (Loss Severity Factor = 0.8 + [0.005 * (Loss Severity Score − 5)]. The performance score is multiplied by the loss severity factor to produce a total score (total score = performance score * loss severity factor). The total score can be up to 20 percent higher or lower than the performance score but cannot be less than 30 or more than 90. The total score is subject to adjustment, up or down, by a maximum of 15 points, as set forth in paragraph (b)(3) of this section. The resulting total score after adjustment cannot be less than 30 or more than 90.

(D) *Initial base assessment rate.* A highly complex institution with a total score of 30 pays the minimum initial base assessment rate and an institution with a total score of 90 pays the maximum initial base assessment rate. For total scores between 30 and 90, initial base assessment rates rise at an increasing rate as the total score increases, calculated according to the following formula:

$$Rate = Minimum\ Rate + \left[\left(\left(1.4245 \times \left(\frac{Score}{100}\right)^{3}\right) - 0.0385\right) \times \left(Maximum\ Rate - Minimum\ Rate\right)\right]$$

where Rate is the initial base assessment rate (expressed in basis points), Maximum Rate is the maximum initial base assessment rate then in effect (expressed in basis points), and Minimum Rate is the minimum initial base assessment rate then in effect (expressed in basis points). Initial base assessment rates are subject to adjustment pursuant to paragraphs (b)(3), (d)(1), and (d)(2) of this section; highly complex institutions that are not well capitalized or have a CAMELS composite rating of 3, 4 or 5 shall be subject to the adjustment at paragraph (d)(3); these adjustments shall result in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate.

(3) *Adjustment to total score for large institutions and highly complex institutions.* The total score for large institutions and highly complex institutions is subject to adjustment, up or down, by a maximum of 15 points, based upon significant risk factors that are not adequately captured in the appropriate scorecard. In making such adjustments, the FDIC may consider such information as financial performance and condition information and other market or supervisory information. The FDIC will also consult with an institution's primary federal regulator and, for state chartered institutions, state banking supervisor.

(i) *Prior notice of adjustments*—(A) *Prior notice of upward adjustment.* Prior to making any upward adjustment to an institution's total score because of considerations of additional risk information, the FDIC will formally notify the institution and its primary federal regulator and provide an opportunity to respond. This notification will include the reasons for the adjustment and when the adjustment will take effect.

(B) *Prior notice of downward adjustment.* Prior to making any downward adjustment to an institution's total score because of considerations of additional risk information, the FDIC will formally notify the institution's primary federal regulator and provide an opportunity to respond.

(ii) *Determination whether to adjust upward; effective period of adjustment.* After considering an institution's and the primary federal regulator's responses to the notice, the FDIC will determine whether the adjustment to an institution's total score is warranted, taking into account any revisions to scorecard measures, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. The FDIC will evaluate the need for the adjustment each subsequent assessment period. Except as provided in paragraph (b)(3)(iv) of this section, the amount of adjustment cannot exceed the proposed adjustment amount contained in the initial notice unless additional notice is provided so that the primary federal regulator and the institution may respond.

(iii) *Determination whether to adjust downward; effective period of adjustment.* After considering the primary federal regulator's responses to the notice, the FDIC will determine whether the adjustment to total score is warranted, taking into account any revisions to scorecard measures. Any downward adjustment in an institution's total score will remain in effect for subsequent assessment periods until the FDIC determines that an

adjustment is no longer warranted. Downward adjustments will be made without notification to the institution. However, the FDIC will provide advance notice to an institution and its primary federal regulator and give them an opportunity to respond before removing a downward adjustment.

(iv) *Adjustment without notice.* Notwithstanding the notice provisions set forth above, the FDIC may change an institution's total score without advance notice under this paragraph, if the institution's supervisory ratings or the scorecard measures deteriorate.

(c) *Insured branches of foreign banks*—(1) *Risk categories for insured branches of foreign banks.* Insured branches of foreign banks shall be assigned to risk categories as set forth in paragraph (a)(1) of this section.

(2) *Capital evaluations for insured branches of foreign banks.* Each insured branch of a foreign bank will receive one of the following three capital evaluations on the basis of data reported in the institution's Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(i) *Well Capitalized.* An insured branch of a foreign bank is Well Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (c)(2) of this section.

(ii) *Adequately Capitalized.* An insured branch of a foreign bank is Adequately Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (c)(2) of this section; and

(C) Does not meet the definition of a Well Capitalized insured branch of a foreign bank.

(iii) *Undercapitalized.* An insured branch of a foreign bank is undercapitalized institution if it does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (c)(2)(i) and (ii) of this section.

(3) *Supervisory evaluations for insured branches of foreign banks.* Each insured branch of a foreign bank will be assigned to one of three supervisory groups as set forth in paragraph (a)(3) of this section.

(4) *Assessment method for insured branches of foreign banks in Risk Category I.* Insured branches of foreign banks in Risk Category I shall be assessed using the weighted average ROCA component rating.

(i) *Weighted average ROCA component rating.* The weighted average ROCA component rating shall equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%. The weighted average ROCA rating will be multiplied by 5.076 (which shall be the pricing multiplier). To this result will be added a uniform amount. The resulting sum—the initial base assessment rate—will equal an institution's total base assessment rate; provided, however, that no institution's total base assessment rate will be less than the minimum total base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum total base assessment rate in effect for Risk Category I institutions for that quarter.

(ii) *Uniform amount.* Except as adjusted for the actual assessment rates set by the Board under § 327.10(f), the uniform amount for all insured branches of foreign banks shall be:

(A) −3.127 whenever the assessment rate schedule set forth in § 327.10(a) is in effect;

(B) −5.127 whenever the assessment rate schedule set forth in § 327.10(b) is in effect;

(C) −-6.127 whenever the assessment rate schedule set forth in § 327.10(c) is in effect; or

(D) −7.127 whenever the assessment rate schedule set forth in § 327.10(d) is in effect.

(iii) *Insured branches of foreign banks not subject to certain adjustments.* No insured branch of a foreign bank in any risk category shall be subject to the adjustments in paragraphs (b)(3), (d)(1), or (d)(3) of this section.

(iv) *Implementation of changes between Risk Categories for insured branches of foreign banks.* If, during a quarter, a ROCA rating change occurs that results in an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the weighted average ROCA component rating. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a ROCA rating change occurs that results in an insured branch of a foreign bank moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall equal the rate determined as provided using the weighted average ROCA component rating. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate shall be determined under the assessment schedule for the appropriate Risk Category.

(v) *Implementation of changes within Risk Category I for insured branches of foreign banks.* If, during a quarter, an insured branch of a foreign bank remains in Risk Category I, but a ROCA component rating changes that will affect the institution's initial base assessment rate, separate assessment rates for the portion(s) of the quarter before and after the change(s) shall be determined under this paragraph (c)(4) of this section.

(d) *Adjustments*—(1) *Unsecured debt adjustment to initial base assessment rate for all institutions.* All institutions, except new institutions as provided under paragraphs (f)(1) and (2) of this section and insured branches of foreign banks as provided under paragraph (c)(4)(iii) of this section, shall be subject to an adjustment of assessment rates for unsecured debt. Any unsecured debt adjustment shall be made after any adjustment under paragraph (b)(3) of this section.

(i) *Application of unsecured debt adjustment.* The unsecured debt adjustment shall be determined as the sum of the initial base assessment rate plus 40 basis points; that sum shall be multiplied by the ratio of an insured depository institution's long-term unsecured debt to its assessment base. The amount of the reduction in the assessment rate due to the adjustment is equal to the dollar amount of the

adjustment divided by the amount of the assessment base.

(ii) *Limitation*—No unsecured debt adjustment for any institution shall exceed the lesser of 5 basis points or 50 percent of the institution's initial base assessment rate.

(iii) *Applicable quarterly reports of condition*—Unsecured debt adjustment ratios for any given quarter shall be calculated from quarterly reports of condition (Consolidated Reports of Condition and Income and Thrift Financial Reports, or any successor reports to either, as appropriate) filed by each institution as of the last day of the quarter.

(2) *Depository institution debt adjustment to initial base assessment rate for all institutions.* All institutions shall be subject to an adjustment of assessment rates for unsecured debt held that is issued by another depository institution. Any such depository institution debt adjustment shall be made after any adjustment under paragraphs (b)(3) and (d)(1) of this section.

(i) *Application of depository institution debt adjustment.* An insured depository institution shall pay a 50 basis point adjustment on the amount of unsecured debt it holds that was issued by another insured depository institution to the extent that such debt exceeds 3 percent of the institution's Tier 1 capital. The amount of long-term unsecured debt issued by another insured depository institution shall be calculated using the same valuation methodology used to calculate the amount of such debt for reporting on the asset side of the balance sheets.

(ii) *Applicable quarterly reports of condition.* Depository institution debt adjustment ratios for any given quarter shall be calculated from quarterly reports of condition (Consolidated Reports of Condition and Income and Thrift Financial Reports, or any successor reports to either, as appropriate) filed by each institution as of the last day of the quarter.

(3) *Brokered Deposit Adjustment.* All small institutions in Risk Categories II, III, and IV, all large institutions and all highly complex institutions, except large and highly complex institutions (including new large and new highly complex institutions) that are well capitalized and have a CAMELS composite rating of 1 or 2, shall be subject to an assessment rate adjustment for brokered deposits. Any such brokered deposit adjustment shall be made after any adjustment under paragraphs (b)(3), (d)(1), and (d)(2) of this section. The brokered deposit adjustment includes all brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), and 12 CFR 337.6, including reciprocal deposits as defined in § 327.8(p), and brokered deposits that consist of balances swept into an insured institution from another institution. The adjustment under this paragraph is limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10 percent; asset growth rates do not affect the adjustment. Insured branches of foreign banks are not subject to the brokered deposit adjustment as provided in paragraph (c)(4)(iii) of this section.

(i) *Application of brokered deposit adjustment.* The brokered deposit adjustment shall be determined by multiplying 25 basis points by the ratio of the difference between an insured depository institution's brokered deposits and 10 percent of its domestic deposits to its assessment base.

(ii) *Limitation.* The maximum brokered deposit adjustment will be 10 basis points; the minimum brokered deposit adjustment will be 0.

(iii) *Applicable quarterly reports of condition.* Brokered deposit ratios for any given quarter shall be calculated from the quarterly reports of condition (Call Reports and Thrift Financial Reports, or any successor reports to either, as appropriate) filed by each institution as of the last day of the quarter.

(e) *Request to be treated as a large institution*—(1) *Procedure.* Any institution with assets of between $5 billion and $10 billion may request that the FDIC determine its assessment rate as a large institution. The FDIC will consider such a request provided that it has sufficient information to do so. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than $5 billion in its report of condition for four consecutive quarters, the institution shall be deemed a small institution for assessment purposes.

(2) *Time limit on subsequent request for alternate method.* An institution whose request to be assessed as a large institution is granted by the FDIC shall not be eligible to request that it be assessed as a small institution for a period of three years from the first quarter in which its approved request to be assessed as a large institution became effective. Any request to be assessed as a small institution must be made to the FDIC's Division of Insurance and Research.

(3) An institution that disagrees with the FDIC's determination that it is a large, highly complex, or small institution may request review of that determination pursuant to § 327.4(c).

(f) *New and established institutions and exceptions*—(1) *New small institutions.* A new small Risk Category I institution shall be assessed the Risk Category I maximum initial base assessment rate for the relevant assessment period. No new small institution in any risk category shall be subject to the unsecured debt adjustment as determined under paragraph (d)(1) of this section. All new small institutions in any Risk Category shall be subject to the depository institution debt adjustment as determined under paragraph (d)(2) of this section. All new small institutions in Risk Categories II, III, and IV shall be subject to the brokered deposit adjustment as determined under paragraph (d)(3) of this section.

(2) *New large institutions and new highly complex institutions.* All new large institutions and all new highly complex institutions shall be assessed under the appropriate method provided at paragraph (b)(1) or (2) of this section and subject to the adjustments provided at paragraphs (b)(3), (d)(2), and (d)(3) of this section. No new highly complex or large institutions are entitled to adjustment under paragraph (d)(1) of this section. If a large or highly complex institution has not yet received CAMELS ratings, it will be given a weighted CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

(3) *CAMELS ratings for the surviving institution in a merger or consolidation.* When an established institution merges with or consolidates into a new institution, if the FDIC determines the resulting institution to be an established institution under § 327.8(k)(1), its CAMELS ratings for assessment purposes will be based upon the established institution's ratings prior to the merger or consolidation until new ratings become available.

(4) *Rate applicable to institutions subject to subsidiary or credit union exception.* A small Risk Category I institution that is established under § 327.8(k)(4) or (5), but does not have CAMELS component ratings, shall be assessed at 2 basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. Thereafter, the assessment rate will be determined by annualizing, where appropriate, financial ratios

obtained from all quarterly reports of condition that have been filed, until the institution files four quarterly reports of condition. If a large or highly complex institution is considered established under § 327.8(k)(4) or (5), but does not have CAMELS component ratings, it will be given a weighted CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

(5) *Request for review.* An institution that disagrees with the FDIC's determination that it is a new institution may request review of that determination pursuant to § 327.4(c).

(g) *Assessment rates for bridge depository institutions and conservatorships.* Institutions that are bridge depository institutions under 12 U.S.C. 1821(n) and institutions for which the Corporation has been appointed or serves as conservator shall, in all cases, be assessed at the Risk Category I minimum initial base assessment rate, which shall not be subject to adjustment under paragraphs (b)(3), (d)(1), (2) or (3) of this section.

■ 7. Revise § 327.10 to read as follows:

§ 327.10 Assessment rate schedules.

(a) *Assessment rate schedules before the reserve ratio of the DIF reaches 1.15 percent—*

(1) *Applicability.* The assessment rate schedules in paragraph (a) of this section will cease to be applicable when the reserve ratio of the DIF first reaches 1.15 percent.

(2) *Initial Base Assessment Rate Schedule.* Before the reserve ratio of the DIF reaches 1.15 percent, the initial base assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE BEFORE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	5–9	14	23	35	5–35

* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 5 to 9 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 14, 23, and 35 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 5 to 35 basis points.

(3) *Total Base Assessment Rate Schedule after Adjustments.* Before the reserve ratio of the DIF reaches 1.15 percent, the total base assessment rates after adjustments for an insured depository institution shall be as prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)* BEFORE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT**

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	5–9	14	23	35	5–35
Unsecured debt adjustment	(4.5)–0	(5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment		0–10	0–10	0–10	0–10
Total base assessment rate	2.5–9	9–24	18–33	30–45	2.5–45

* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

** Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for all institutions in Risk Category I shall range from 2.5 to 9 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 9 to 24 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 18 to 33 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 30 to 45 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 2.5 to 45 basis points.

(b) *Assessment rate schedules once the reserve ratio of the DIF first reaches 1.15 percent, and the reserve ratio for the immediately prior assessment period is less than 2 percent—* (1) *Initial Base Assessment Rate Schedule.* Once the reserve ratio of the DIF first reaches 1.15 percent, and the reserve ratio for the immediately prior assessment period is less than 2 percent, the initial base assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE ONCE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT AND THE RESERVE RATIO FOR THE IMMEDIATELY PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	3–7	12	19	30	3–30

* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 3 to 7 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 12, 19, and 30 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 3 to 30 basis points.

(2) *Total Base Assessment Rate Schedule after Adjustments.* Once the reserve ratio of the DIF first reaches 1.15 percent, and the reserve ratio for the immediately prior assessment period is less than 2 percent, the total base assessment rates after adjustments for an insured depository institution shall be as prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) * ONCE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT AND THE RESERVE RATIO FOR THE IMMEDIATELY PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT **

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	3–7	12	19	30	3–30
Unsecured debt adjustment	(3.5)–0	(5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment	.....	0–10	0–10	0–10	0–10
Total base assessment rate	1.5–7	7–22	14–29	25–40	1.5–40

* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

** Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for institutions in Risk Category I shall range from 1.5 to 7 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 7 to 22 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 14 to 29 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 25 to 40 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 1.5 to 40 basis points.

(c) *Assessment rate schedules if the reserve ratio of the DIF for the prior assessment period is equal to or greater than 2 percent and less than 2.5 percent*—(1) *Initial Base Assessment Rate Schedule.* If the reserve ratio of the DIF for the prior assessment period is equal to or greater than 2 percent and less than 2.5 percent, the initial base assessment rate for an insured depository institution, except as provided in paragraph (e) of this section, shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS EQUAL TO OR GREATER THAN 2 PERCENT BUT LESS THAN 2.5 PERCENT

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	2–6	10	17	28	2–28

* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 2 to 6 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 10, 17, and 28 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 2 to 28 basis points.

(2) *Total Base Assessment Rate Schedule after Adjustments.* If the reserve ratio of the DIF for the prior assessment period is equal to or greater than 2 percent and less than 2.5 percent, the total base assessment rates after adjustments for an insured depository institution, except as provided in paragraph (e) of this section, shall be as prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) * IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS EQUAL TO OR GREATER THAN 2 PERCENT BUT LESS THAN 2.5 PERCENT **

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	2–6	10	17	28	2–38
Unsecured debt adjustment	(3)–0	(5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment		0–10	0–10	0–10	0–10
Total base assessment rate	1–6	5–20	12–27	23–38	1–38

* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

** Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for institutions in Risk Category I shall range from 1 to 6 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 5 to 20 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 12 to 27 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 23 to 38 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 1 to 38 basis points.

(d) *Assessment rate schedules if the reserve ratio of the DIF for the prior assessment period is greater than 2.5 percent*—(1) *Initial Base Assessment Rate Schedule.* If the reserve ratio of the DIF for the prior assessment period is greater than 2.5 percent, the initial base assessment rate for an insured depository institution, except as provided in paragraph (e) of this section, shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS GREATER THAN OR EQUAL TO 2.5 PERCENT

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	1–5	9	15	25	1–25

* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 1 to 5 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 9, 15, and 25 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 1 to 25 basis points.

(2) *Total Base Assessment Rate Schedule after Adjustments.* If the reserve ratio of the DIF for the prior assessment period is greater than 2.5 percent, the total base assessment rates after adjustments for an insured depository institution, except as provided in paragraph (e) of this section, shall be the rate prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) * IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS GREATER THAN OR EQUAL TO 2.5 PERCENT **

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Initial base assessment rate	1–5	9	15	25	1–25

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) * IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS GREATER THAN OR EQUAL TO 2.5 PERCENT **—Continued

	Risk category I	Risk category II	Risk category III	Risk category IV	Large and highly complex institutions
Unsecured debt adjustment	(2.5)–0	(4.5)–0	(5)–0	(5)–0	(5)–0
Brokered deposit adjustment	.....	0–10	0–10	0–10	0–10
Total Base Assessment Rate	0.5–5	4.5–19	10–25	20–35	0.5–35

* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

**Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for institutions in Risk Category I shall range from 0.5 to 5 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 4.5 to 19 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 10 to 25 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 20 to 35 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 0.5 to 35 basis points.

(e) *Assessment Rate Schedules for New Institutions.* New depository institutions, as defined in 327.8(j), shall be subject to the assessment rate schedules as follows:

(1) *Prior to the reserve ratio of the DIF first reaching 1.15 percent after September 30, 2010.* After September 30, 2010, if the reserve ratio of the DIF has not reached 1.15 percent, new institutions shall be subject to the initial and total base assessment rate schedules provided for in paragraph (a) of this section.

(2) *Assessment rate schedules once the DIF reserve ratio first reaches 1.15 percent after September 30, 2010.* After September 30, 2010, once the reserve ratio of the DIF first reaches 1.15 percent, new institutions shall be subject to the initial and total base assessment rate schedules provided for in paragraph (b) of this section, even if the reserve ratio equals or exceeds 2 percent or 2.5 percent.

(f) *Total Base Assessment Rate Schedule adjustments and procedures—(1) Board Rate Adjustments.* The Board may increase or decrease the total base assessment rate schedule in paragraphs (a) through (d) of this section up to a maximum increase of 2 basis points or a fraction thereof or a maximum decrease of 2 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the total base assessment rate schedule. In no case may such rate adjustments result in a total base assessment rate that is mathematically less than zero or in a total base assessment rate schedule that, at any time, is more than 2 basis points above or below the total base assessment schedule for the Deposit Insurance Fund in effect pursuant to paragraph (b) of this section, nor may any one such adjustment constitute an increase or decrease of more than 2 basis points.

(2) *Amount of revenue.* In setting assessment rates, the Board shall take into consideration the following:

(i) Estimated operating expenses of the Deposit Insurance Fund;

(ii) Case resolution expenditures and income of the Deposit Insurance Fund;

(iii) The projected effects of assessments on the capital and earnings of the institutions paying assessments to the Deposit Insurance Fund;

(iv) The risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b)(1); and

(v) Any other factors the Board may deem appropriate.

(3) *Adjustment procedur*e. Any adjustment adopted by the Board pursuant to this paragraph will be adopted by rulemaking, except that the Corporation may set assessment rates as necessary to manage the reserve ratio, within set parameters not exceeding cumulatively 2 basis points, pursuant to paragraph (f)(1) of this section, without further rulemaking.

(4) *Announcement.* The Board shall announce the assessment schedules and the amount and basis for any adjustment thereto not later than 30 days before the quarterly certified statement invoice date specified in § 327.3(b) of this part for the first assessment period for which the adjustment shall be effective. Once set, rates will remain in effect until changed by the Board.

■ 8. Revise appendices A, B, and C to subpart A of part 327 to read as follows:

Appendix A to Subpart A of Part 327—Description of Scorecard Measures

Tier 1 Leverage Ratio	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.
Concentration Measure for Large Insured depository institutions (excluding Highly Complex Institutions).	The concentration score for large institutions is the higher of the following two scores:
(1) Higher-Risk Assets/Tier 1 Capital and Reserves	Sum of construction and land development (C&D) loans (funded and unfunded), leveraged loans (funded and unfunded), nontraditional mortgages, and subprime consumer loans divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the ratio.
(2) Growth-Adjusted Portfolio Concentrations	The measure is calculated in the following steps: (1) Concentration levels (as a ratio to Tier 1 capital and reserves) are calculated for each broad portfolio category:

	• C&D, • Other commercial real estate loans, • First lien residential mortgages (including non-agency residential mortgage-backed securities), • Closed-end junior liens and home equity lines of credit (HELOCs), • Commercial and industrial loans, • Credit card loans, and • Other consumer loans. (2) Risk weights are assigned to each loan category based on historical loss rates. (3) Concentration levels are multiplied by risk weights and squared to produce a risk-adjusted concentration ratio for each portfolio. (4) Three-year merger-adjusted portfolio growth rates are then scaled to a growth factor of 1 to 1.2 where a 3-year cumulative growth rate of 20 percent or less equals a factor of 1 and a growth rate of 80 percent or greater equals a factor of 1.2. If three years of data are not available, a growth factor of 1 will be assigned. (5) The risk-adjusted concentration ratio for each portfolio is multiplied by the growth factor and resulting values are summed. See Appendix C for the detailed description of the measure.
Concentration Measure for Highly Complex Institutions	Concentration score for highly complex institutions is the highest of the following three scores:
(1) Higher-Risk Assets/Tier 1 Capital and Reserves	Sum of C&D loans (funded and unfunded), leveraged loans (funded and unfunded), nontraditional mortgages, and subprime consumer loans divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the measure.
(2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves	Sum of the total exposure amount to the largest 20 counterparties (in terms of exposure amount) divided by Tier 1 capital and reserves. Counterparty exposure is equal to the sum of Exposure at Default (EAD) associated with derivatives trading and Securities Financing Transactions (SFTs) and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level.[1]
(3) Largest Counterparty Exposure/Tier 1 Capital and Reserves	The amount of exposure to the largest counterparty (in terms of exposure amount) divided by Tier 1 capital and reserves. Counterparty exposure is equal to the sum of Exposure at Default (EAD) associated with derivatives trading and Securities Financing Transactions (SFTs) and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level.
Core Earnings/Average Quarter-End Total Assets	Core earnings are defined as net income less extraordinary items and tax-adjusted realized gains and losses on available-for-sale (AFS) and held-to-maturity (HTM) securities, adjusted for mergers. The ratio takes a four-quarter sum of merger-adjusted core earnings and divides it by an average of five quarter-end total assets (most recent and four prior quarters). If four quarters of data on core earnings are not available, data for quarters that are available will be added and annualized. If five quarters of data on total assets are not available, data for quarters that are available will be averaged.
Credit Quality Measure	The credit quality score is the higher of the following two scores:
(1) Criticized and Classified Items/Tier 1 Capital and Reserves	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary federal regulator have graded "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.[2] Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.
(2) Underperforming Assets/Tier 1 Capital and Reserves	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.
Core Deposits/Total Liabilities	Total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities.

Balance Sheet Liquidity Ratio	Sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available for sale and held to maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits.[3]
Potential Losses/Total Domestic Deposits (Loss Severity Measure)	Potential losses to the DIF in the event of failure divided by total domestic deposits. Appendix D describes the calculation of the loss severity measure in detail.
Market Risk Measure for Highly Complex Institutions	The market risk score is a weighted average of the following three scores:
(1) Trading Revenue Volatility/Tier 1 Capital	Trailing 4-quarter standard deviation of quarterly trading revenue (merger-adjusted) divided by Tier 1 capital.
(2) Market Risk Capital/Tier 1 Capital	Market risk capital divided by Tier 1 capital.[4]
(3) Level 3 Trading Assets/Tier 1 Capital	Level 3 trading assets divided by Tier 1 capital.
Average Short-term Funding/Average Total Assets	Quarterly average of federal funds purchased and repurchase agreements divided by the quarterly average of total assets as reported on Schedule RC–K of the Call Reports.

[1] EAD and SFTs are defined and described in the compilation issued by the Basel Committee on Banking Supervision in its June 2006 document, "International Convergence of Capital Measurement and Capital Standards." The definitions are described in detail in Annex 4 of the document. Any updates to the Basel II capital treatment of counterparty credit risk would be implemented as they are adopted. *http://www.bis.org/publ/bcbs128.pdf.*

[2] A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

[3] Deposit runoff rates for the balance sheet liquidity ratio reflect changes issued by the Basel Committee on Banking Supervision in its December 2010 document, "Basel III: International Framework for liquidity risk measurement, standards, and monitoring," *http://www.bis.org/publ/bcbs188.pdf.*

[4] Market risk capital is defined in Appendix C of Part 325 of the FDIC Rules and Regulations,. *http://www.fdic.gov/regulations/laws/rules/2000-4800.html#fdic2000appendixctopart325*.

Appendix B to Subpart A of Part 327—Conversion of Scorecard Measures into Score

1. Weighted Average CAMELS Rating

Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100 according to the following equation:

$S = 25 + [(20/3) * (C^2 - 1)]$,

where:

S = the weighted average CAMELS score; and

C = the weighted average CAMELS rating.

2. Other Scorecard Measures

For certain scorecard measures, a lower ratio implies lower risk and a higher ratio implies higher risk. These measures include:

- Concentration measure;
- Credit quality measure;
- Market risk measure;
- Average short-term funding to average total assets ratio; and
- Potential losses to total domestic deposits ratio (loss severity measure).

For those measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$S = (V - \text{Min}) * 100/(\text{Max} - \text{Min})$,

where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

For other scorecard measures, a lower value represents higher risk and a higher value represents lower risk. These measures include:

- Tier 1 leverage ratio;
- Core earnings to average quarter-end total assets ratio;
- Core deposits to total liabilities ratio; and
- Balance sheet liquidity ratio.

For those measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$S = (\text{Max} - V) * 100/(\text{Max} - \text{Min})$,

where S is score (rounded to three decimal points), V is the value of the measure, Max is the maximum cutoff value and Min is the minimum cutoff value.

Appendix C to Subpart A to Part 327—Concentration Measures

The concentration score is the higher of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score. The concentration score for highly complex institutions is the highest of the higher-risk assets to Tier 1 capital and reserves score, the Top 20 counterparty exposure to Tier 1 capital and reserves score, or the largest counterparty to Tier 1 capital and reserves score. The higher-risk assets to Tier 1 capital and reserve ratio and the growth-adjusted portfolio concentration measure are described below.

A. Higher-Risk Assets/Tier 1 Capital and Reserves

The higher-risk assets to Tier 1 capital and reserves ratio is the sum of the concentrations in each of four risk areas described below and is calculated as:

$$H_i = \sum_{k=1}^{4} \left(\frac{\text{Amount of Exposure}_{i,k}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right)$$

where:
H is institution i's higher-risk concentration measure and
k is a risk area.[1] The four risk areas (*k*) are defined as:

- Construction and land development loans (funded and unfunded);
- Leveraged loans (funded and unfunded); [2]
- Nontraditional mortgage loans; and
- Subprime consumer loans.[3]

The risk areas are defined according to the interagency guidance for a given product with specific modifications made to minimize reporting discrepancies. The definitions for each risk area are as follows:

1. *Construction and Land Development Loans:* Construction and development loans include construction and land development loans outstanding and unfunded commitments.

2. *Leveraged Loans*: Leveraged loans include: (1) All commercial loans (funded and unfunded) with an original amount greater than $1 million that meet any one of the conditions below at either origination or renewal, except real estate loans; (2) securities issued by commercial borrowers that meet any one of the conditions below at either origination or renewal, except securities classified as trading book; and (3) and securitizations that are more than 50 percent collateralized by assets that meet any one of the conditions below at either origination or renewal, except securities classified as trading book.[4] [5]

- Loans or securities where borrower's total or senior debt to trailing twelve-month EBITDA [6] (i.e. operating leverage ratio) is greater than 4 or 3 times, respectively. For purposes of this calculation, the only permitted EBITDA adjustments are those adjustments specifically permitted for that borrower in its credit agreement; or
- Loans or securities that are designated as highly leveraged transactions (HLT) by syndication agent.[7]

3. *Nontraditional Mortgage Loans:* Nontraditional mortgage loans includes all residential loan products that allow the borrower to defer repayment of principal or interest and includes all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages.[8] [9] [10]

For purposes of the higher-risk concentration ratio, nontraditional mortgage loans include securitizations where more than 50 percent of the assets backing the securitization meet one or more of the preceding criteria for nontraditional mortgage loans, with the exception of those securities classified as trading book.

4. *Subprime Loans:* Subprime loans include loans made to borrowers that display one or more of the following credit risk characteristics (excluding subprime loans that are previously included as nontraditional mortgage loans) at origination or upon refinancing, whichever is more recent.

- Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
- Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
- Bankruptcy in the last 5 years; or
- Debt service-to-income ratio of 50 percent or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.[11]

Subprime loans also include loans identified by an insured depository institution as subprime loans based upon similar borrower characteristics and securitizations where more than 50 percent of assets backing the securitization meet one or more of the preceding criteria for subprime loans, excluding those securities classified as trading book.

B. Growth-Adjusted Portfolio Concentration Measure

The growth-adjusted concentration measure is the sum of the concentration ratio for each of seven portfolios, adjusted for risk weights and growth. The product of the risk weight and the concentration ratio for each portfolio is first squared and then multiplied by the growth factor for each. The measure is calculated as:

$$N_i = \sum_{k=1}^{7} \left[w_k * \left(\frac{\text{Amount of exposure}_{i,k}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right) \right]^2 * g_k$$

where:
N is institution *i*'s growth-adjusted portfolio concentration measure; [12]
k is a portfolio;
g is a growth factor for institution i's portfolio k; and,
w is a risk weight for portfolio *k*.

The seven portfolios (k) are defined based on the Call Report/TFR data and they are:

- Construction and land development loans;
- Other commercial real estate loans;
- First-lien residential mortgages and non-agency residential mortgage-backed securities (excludes CMOs, REMICS, CMO and REMIC residuals, and stripped MBS issued by non-U.S. Government issuers for which the collateral consists of MBS issued or guaranteed by U.S. government agencies);
- Closed-end junior liens and home equity lines of credit (HELOCs);
- Commercial and industrial loans;
- Credit card loans; and
- Other consumer loans.[13] [14]

The growth factor, g, is based on a three-year merger-adjusted growth rate for a given portfolio; g ranges from 1 to 1.2 where a 20 percent growth rate equals a factor of 1 and an 80 percent growth rate equals a factor of 1.2.[15] For growth rates less than 20 percent, g is 1; for growth rates greater than 80 percent, g is 1.2. For growth rates between 20 percent and 80 percent, the growth factor is calculated as:

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[1] The high-risk concentration ratio is rounded to two decimal points.

[2] Unfunded amounts include irrevocable and revocable commitments.

[3] Each loan concentration category should include purchased credit impaired loans and should exclude the amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

[4] The following guidelines should be used to determine the "original amount" of a loan:

(1) For loans drawn down under lines of credit or loan commitments, the "original amount" of the loan is the size of the line of credit or loan commitment when the line of credit or loan commitment was most recently approved, extended, or renewed prior to the report date. However, if the amount currently outstanding as of the report date exceeds this size, the "original amount" is the amount currently outstanding on the report date.

(2) For loan participations and syndications, the "original amount" of the loan participation or syndication is the entire amount of the credit originated by the lead lender.

(3) For all other loans, the "original amount" is the total amount of the loan at origination or the amount currently outstanding as of the report date, whichever is larger.

[5] Leveraged loans criteria are consistent with guidance issued by the Office of the Comptroller of the Currency in its Comptroller's Handbook, *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf,* but do not include all of the criteria in the handbook.

[6] Earnings before interest, taxes, depreciation, and amortization.

[7] *http://www.fdic.gov/news/news/press/2001/pr2801.html.*

[8] For purposes of this rule making, a teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term.

[9] *http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html.*

[10] A mortgage loan is no longer considered a nontraditional mortgage once the teaser rate has expired. An interest only loan is no longer considered nontraditional once the loan begins to amortize.

[11] *http://www.fdic.gov/news/news/press/2001/pr0901a.html;* however, the definition in the text above excludes any reference to FICO or other credit bureau scores.

[12] The growth-adjusted portfolio concentration measure is rounded to two decimal points.

[13] All loan concentrations should include the fair value of purchased credit impaired loans.

[14] Each loan concentration category should exclude the amount of loans recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

[15] The growth factor is rounded to two decimal points.

$$g_{i,k} = 1 + \left[\frac{1}{3}\left(G_{i,k} - 0.20\right)\right]$$

$$\text{where } G_{i,k} = \frac{V_{i,k,t}}{V_{i,k,t-12}} - 1, \text{ V is the portfolio amount as reported on the Call Report or TFR}$$

The risk weight for each portfolio reflects relative peak loss rates for banks at the 90th percentile during the 1990–2009 period.[16] These loss rates were converted into equivalent risk weights as shown in Table C.1.

TABLE C.1—90TH PERCENTILE ANNUAL LOSS RATES FOR 1990–2009 PERIOD AND CORRESPONDING RISK WEIGHTS

Portfolio	Loss rates (90th percentile) (percent)	Risk weights
First-Lien Mortgages	2.3	0.5
Second/Junior Lien Mortgages	4.6	0.9
Commercial and Industrial (C&I) Loans	5.0	1.0
Construction and Development (C&D) Loans	15.0	3.0
Commercial Real Estate Loans, excluding C&D	4.3	0.9
Credit Card Loans	11.8	2.4
Other Consumer Loans	5.9	1.2

■ 9. Add appendix D to subpart A of part 327 to read as follows:

Appendix D to Subpart A of Part 327—Description of the Loss Severity Measure

The loss severity measure applies a standardized set of assumptions to an institution's balance sheet to measure possible losses to the FDIC in the event of an institution's failure. To determine an institution's loss severity rate, the FDIC first applies assumptions about uninsured deposit and other unsecured liability runoff, and growth in insured deposits, to adjust the size and composition of the institution's liabilities. Assets are then reduced to match any reduction in liabilities.[1] The institution's asset values are then further reduced so that the Tier 1 leverage ratio reaches 2 percent.[2] In both cases, assets are adjusted pro rata to preserve the institution's asset composition. Assumptions regarding loss rates at failure for a given asset category and the extent of secured liabilities are then applied to estimated assets and liabilities at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio. The loss severity measure is an average loss severity ratio for the three most recent quarters of data available.

Runoff and Capital Adjustment Assumptions

Table D.1 contains run-off assumptions.

TABLE D.1—RUNOFF RATE ASSUMPTIONS

Liability type	Runoff rate * (percent)
Insured Deposits	(10)
Uninsured Deposits	58
Foreign Deposits	80
Federal Funds Purchased	100
Repurchase Agreements	75
Trading Liabilities	50
Unsecured Borrowings <= 1 Year	75
Secured Borrowings <= 1 Year	25
Subordinated Debt and Limited Liability Preferred Stock	15

* A negative rate implies growth.

Given the resulting total liabilities after runoff, assets are then reduced pro rata to preserve the relative amount of assets in each of the following asset categories and to achieve a Tier 1 leverage ratio of 2 percent:

- Cash and Interest Bearing Balances;
- Trading Account Assets;
- Federal Funds Sold and Repurchase Agreements;
- Treasury and Agency Securities;
- Municipal Securities;
- Other Securities;
- Construction and Development Loans;
- Nonresidential Real Estate Loans;
- Multifamily Real Estate Loans;
- 1–4 Family Closed-End First Liens;
- 1–4 Family Closed-End Junior Liens;
- Revolving Home Equity Loans; and

[16] The risk weights are based on loss rates for each portfolio relative to the loss rate for C&I loans, which is given a risk weight of 1. The peak loss rates were derived as follows. The loss rate for each loan category for each bank with over $5 billion in total assets was calculated for each of the last twenty calendar years (1990–2009). The highest value of the 90th percentile of each loan category over the twenty year period was selected as the peak loss rate.

[1] In most cases, the model would yield reductions in liabilities and assets prior to failure. Exceptions may occur for institutions primarily funded through insured deposits, which the model assumes to grow prior to failure.

[2] Of course, in reality, runoff and capital declines occur more or less simultaneously as an institution approaches failure. The loss severity measure assumptions simplify this process for ease of modeling.

- Agricultural Real Estate Loans.

Recovery Value of Assets at Failure

Table D.2 shows loss rates applied to each of the asset categories as adjusted above.

TABLE D.2—ASSET LOSS RATE ASSUMPTIONS

Asset category	Loss rate (percent)
Cash and Interest Bearing Balances	0.0
Trading Account Assets	0.0
Federal Funds Sold and Repurchase Agreements	0.0
Treasury and Agency Securities	0.0
Municipal Securities	10.0
Other Securities	15.0
Construction and Development Loans	38.2
Nonresidential Real Estate Loans	17.6
Multifamily Real Estate Loans	10.8
1–4 Family Closed-End First Liens	19.4
1–4 Family Closed-End Junior Liens	41.0
Revolving Home Equity Loans	41.0
Agricultural Real Estate Loans	19.7
Agricultural Loans	11.8
Commercial and Industrial Loans	21.5
Credit Card Loans	18.3
Other Consumer Loans	18.3
All Other Loans	51.0
Other Assets	75.0

Secured Liabilities at Failure

Federal home loan bank advances, secured federal funds purchased and repurchase agreements are assumed to be fully secured. Foreign deposits are treated as fully secured because of the potential for ring fencing.

Loss Severity Ratio Calculation

The FDIC's loss given failure (LGD) is calculated as:

$$LGD = \frac{InsuredDeposits_{Failure}}{DomesticDeposits_{Failure}} \times \left(\text{DomesticDeposits}_{\text{Failure}} - \text{RecoveryValueofAssets}_{\text{Failure}} + \text{SecuredLiabilities}_{\text{Failure}}\right)$$

An end-of-quarter loss severity ratio is LGD divided by total domestic deposits at quarter-end and the loss severity measure for the scorecard is an average of end-of-period loss severity ratios for three most recent quarters.

■ 10. Revise § 327.50 to read as follows:

§ 327.50 Dividends.

(a) *Suspension of Dividends.* The Board will suspend dividends indefinitely whenever the DIF reserve ratio exceeds 1.50 percent at the end of any year.

(b) *Assessment Rate Schedule if DIF Reserve Ratio Exceeds 1.50 Percent.* In lieu of dividends, when the DIF reserve ratio exceeds 1.50 percent, assessment rates shall be determined as set forth in section 327.10, as appropriate.

§§ 327.51 through 327.54 [Removed]

■ 11. Remove §§ 327.51 through 327.54.

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

Appendices

Appendix 1—Analysis of the Projected Effects of the Payment of Assessments on the Capital and Earnings of Insured Depository Institutions

I. Introduction

This analysis estimates the effect of the changes in deposit insurance assessments adopted in the final rule on the equity capital and profitability of insured institutions. These changes include the new assessment base and assessment rates effective April 1, 2011. The FDIC set the rates in the final rule (shown in Table 4) to maintain approximate revenue neutrality upon adoption of the new assessment base required by Dodd-Frank. Therefore, for insured institutions in aggregate, the changes in assessment rates and the assessment base will not affect aggregate earnings and capital. This analysis, therefore, focuses on the magnitude of increases or decreases to individual institutions' earnings and capital resulting from the adoption of the final rule.

II. Assumptions and Data

The analysis assumes that pre-tax income for the next four quarters (beginning in the fourth quarter of 2010) for each institution is equal to annualized income in the second and third quarters of 2010, adjusted for mergers. The analysis also assumes that the effects of changes in assessments are not transferred to customers in the form of changes in borrowing rates, deposit rates, or service fees. Since deposit insurance assessments are a tax-deductible operating expense, increases in the assessment expense can lower taxable income and decreases in the assessment expense can increase taxable income. Therefore, the analysis considers the effective after-tax cost of assessments in calculating the effect on capital.[3]

The effect of the change in assessments on an institution's income is measured by the change in deposit insurance assessments as a percent of income before assessments, taxes, and extraordinary items (hereafter referred to as "income"). This income measure is used in order to eliminate the potentially transitory effects of extraordinary items and taxes on profitability. In order to facilitate a comparison of the impact of assessment changes, institutions were assigned to one of two groups: Those that were profitable and those that were unprofitable in the period covering the second and third quarters of 2010.

For this analysis, data as of September 30, 2010 are used to calculate each bank's assessment base and risk-based assessment rate, both absent the changes in the final rule and under the final rule. The base and rate

[3] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

are assumed to remain constant throughout the one year projection period.[4]

An institution's earnings retention and dividend policies also influence the extent to which assessments affect equity levels. If an institution maintains the same dollar amount of dividends when it pays a higher deposit insurance assessment under the final rule, equity (retained earnings) will be less by the full amount of the after-tax cost of the increase in the assessment. This analysis instead assumes that an institution will maintain its dividend rate (that is, dividends as a fraction of net income) unchanged from the weighted average rate reported over the four quarters ending September 30, 2010. In the event that the ratio of equity to assets falls below 4 percent, however, this assumption is modified such that an institution retains the amount necessary to achieve a 4 percent minimum and distributes any remaining funds according to the dividend payout rate.[5]

III. Projected Effects on Capital and Earnings

The analysis indicates that projected decreases in assessments prevent 3 institutions from becoming under-capitalized (i.e., from falling below 4 percent equity to assets) that were projected to do so otherwise. Lower assessments would also prevent 1 institution from declining below 2 percent equity to assets that would have otherwise. No bank facing an increase in assessments would, as a result of the assessment increase, fall below the 4 percent or 2 percent thresholds.

Table 1.1 shows that approximately 84 percent of profitable institutions are projected to have a decrease in assessments in an amount between 0 and 10 percent of income. Another 14 percent of profitable institutions would have a reduction in assessments exceeding 10 percent of their income. Only 91 institutions would have an increase in assessments, with all but 12 of them between facing assessment increases between 0 and 10 percent of their income.

Table 1.1 - CHANGE IN ASSESSMENTS AS A PERCENT OF INCOME
(Number and assets of profitable institutions)

Change in Assessments as percent of income	Number of Institutions	Percent of Institutions	Assets of Institutions ($ billions)	Percent of Assets
Decrease over 40%	128	2	54	0
Decrease 20% to 40%	173	3	47	0
Decrease 10% to 20%	506	9	167	2
Decrease 5% to 10%	1,370	24	703	6
Decrease 0% to 5%	3,367	60	4,292	39
Increase 0% to 5%	71	1	5,172	47
Increase 5% to 10%	8	0	225	2
Increase 10% to 20%	7	0	99	1
Increase 20% to 40%	3	0	159	1
Increase over 40%	2	0	0	0
Total	5,635	100	10,919	100

(1) Income is defined as income before taxes and extraordinary items.
(2) Profitable institutions are defined as those having positive merger-adjusted income for the six months ending September 30, 2010.
(3) Excludes 10 insured branches of foreign banks and 3 institutions having less than 4 quarters of reported earnings.

Table 1.2 provides the same analysis for institutions that were unprofitable during the period covering the second and third quarters of 2010. Table 1.2 shows that about 65 percent of unprofitable institutions are projected to have a decrease in assessments in an amount between 0 and 10 percent of their losses. Another 33 percent will have lower assessments in amounts exceeding 10 percent income. Only 42 unprofitable banks will face assessment increases, all but 10 of them in amounts between 0 and 10 percent of losses.

[4] All income statement items used in this analysis were adjusted for the effect of mergers. Institutions for which four quarters of non-zero earnings data were unavailable, including insured branches of foreign banks, were excluded from this analysis.

[5] The analysis uses 4 percent as the threshold because an insured institution generally needs to maintain Tier 1 capital of at least 4 percent of assets to be considered "adequately capitalized" under Prompt Corrective Action standards (12 CFR 325.103). In this analysis, equity to assets is used as the measure of capital adequacy.

Table 1.2 - CHANGE ASSESSMENTS AS A PERCENT OF LOSSES (Number and assets of unprofitable institutions)				
Change in Assessments as percent of losses	Number of Institutions	Percent of Institutions	Assets of Institutions ($ billions)	Percent of Assets
Decrease over 40%	171	8	205	8
Decrease 20% to 40%	194	9	247	10
Decrease 10% to 20%	344	16	119	5
Decrease 5% to 10%	368	17	411	17
Decrease 0% to 5%	1,001	47	580	24
Increase 0% to 5%	26	1	344	14
Increase 5% to 10%	6	0	301	12
Increase 10% to 20%	5	0	24	1
Increase 20% to 40%	1	0	31	1
Increase over 40%	4	0	180	7
Total	2,120	100	2,442	100
(1) Income is defined as income before taxes and extraordinary items.				
(2) Unprofitable institutions are defined as those having negative merger-adjusted income for the six months ending September 30, 2010.				
(3) Excludes 10 insured branches of foreign banks and 3 institutions having less than 4 quarters of reported earnings.				

Appendix 2—Statistical Analysis of Measures

The risk measures included in the performance score and the weights assigned to those measures are generally based on the results of an ordinary least square (OLS) model, and in some cases, a logistic regression model. The OLS model estimates how well a set of risk measures in 2005 through 2008 can predict the FDIC's view, based on its experience and judgment, of the proper rank ordering of risk (the expert judgment ranking) for large institutions as of year-end 2009.

The OLS model is specified as:

$$E(Ranking_{i,2009}) = \beta_0 + \sum_{k=1}^{n} \beta_k * Score_{i,k,t}$$

where:
k is a risk measure;
n is the number of risk measures; and
t is the quarter that is being assessed.

The logistic regression model estimates how well the same set of risk measures in 2005 through 2008 can predict whether a large bank fails and it is specified as:

$$\Pr(Fail_i) = \frac{1}{1 + e^{-(\beta_0 + \sum_{k=1}^{n} \beta_k * Score_{i,k,t})}}$$

where:

Fail is whether an institution i failed on or prior to year-end 2009 or not.[1]

To select the risk measures for the scorecard, the FDIC first considered those measures deemed to be most relevant in assessing large institutions' ability to withstand stress. These candidate risk measures were converted to a score between 0 and 100, using specified minimum and maximum cutoff values, and then tested for statistical significance in both the expert judgment ranking and failure prediction models.

Table 2.1 provides descriptive statistics for all risk measures used in the large institution scorecard and highly complex institution scorecard. Most but not all of the minimum and maximum cutoff values for each scorecard measure equal the 10th and 90th percentile values among large institutions based upon data from 2000 through 2009.

[1] For the purpose of regression analysis, large institutions that received significant government support or that came close to failure are deemed to have failed.

Table 2.1—Descriptive Statistics for Risk Measures

Risk Measure	Average	Median	Standard Deviation	Percentile Values			
				10th	25th	75th	90th
Weighted Average CAMELS	1.7	1.7	0.5	1.1	1.4	2.0	2.2
Asset Related Stress Measures							
Tier 1 Leverage Ratio	10.0	7.6	10.3	6.0	6.6	8.9	13.0
High Risk Concentration	105.6	74.5	125.8	0.0	11.8	143.5	238.6
Growth Adjusted Concentration	29.7	16.7	51.6	3.7	10.0	29.4	56.0
Core Earnings	1.1	1.1	1.9	0.0	0.7	1.5	2.3
Criticized And Classified	57.1	45.6	51.6	6.6	18.2	81.5	122.2
Underperforming Assets	18.4	13.0	32.7	2.3	7.1	20.9	35.0
Top 20 Counterparty	93.8	57.4	84.4	23.0	25.5	129.5	235.9
Largest Counterparty	11.0	7.7	8.6	2.6	3.8	19.0	22.7
Trading Volatility	1.0	0.4	2.7	0.1	0.2	0.8	1.6
Market Risk Capital	2.8	0.9	4.6	0.0	0.1	3.5	9.0
Level 3 Trading Assets	17.9	1.5	27.3	0.0	0.1	33.5	72.5
Funding Related Stress Measures							
Core Deposits	54.9	62.6	28.3	5.2	35.7	75.8	86.7
Balance Sheet Liquidity Ratio	602.0	49.1	10,956.9	7.1	20.7	108.3	242.9
Short Term Funding Ratio	9.8	8.6	7.4	1.7	3.3	15.4	19.1
Loss Severity Measure	12.7	10.2	13.3	0.0	2.1	17.0	28.0

Note: Statistics for those measures used exclusively in the Highly Complex Institution scorecard are based on data for those institutions only.

Table 2.2 provides the same statistics for each of the scored risk measures used in the expert judgment ranking and failure prediction models.[2] The figures are based on data from 2005 through 2008. The loss severity measure was excluded from the analysis, since neither of the dependent variables in the two regressions reflect the expected (or actual) loss given failure. Most of the performance measures, other than concentration and credit quality measures, are based on Call Report or TFR data and are defined in Appendix A. The concentration measure is described in detail in Appendix C.

Table 2.2—Descriptive Statistics for Risk Measure Scores

Risk Measure	Average Score	Median Score	Standard Deviation	Percentile Values			
				10th	25th	75th	90th
Weighted Average CAMELS	39.3	39.9	11.3	26.4	30.5	45.0	47.7
Tier 1 Leverage Ratio	66.7	77.0	31.0	1.3	55.1	89.9	99.0
Concentration Measure	67.8	85.0	35.7	7.4	37.3	100.0	100.0
Core Earnings / Average Assets	46.3	43.6	30.1	0.0	25.5	66.3	95.7
Credit Quality Measure	36.5	27.9	31.7	0.0	11.6	53.1	100.0
Core Deposits / Total Liabilities	40.7	31.5	31.9	2.0	16.7	62.8	98.6
Balance Sheet Liquidity Ratio	72.6	84.8	30.7	7.8	61.9	95.6	100.0

OLS Model Results and Derivation of Weights

Table 2.3 shows the results of the OLS model using the scored measures for years 2005 through 2008. The dependent variable for the model is an expert judgment ranking as of year-end 2009. All of the measures are statistically significant in several years at the 5 percent level. Three of the seven measures—the weighted average CAMELS rating, concentration measure, and core deposits ratio—are significant at the 1 percent level in all years. All of the estimated coefficients have a positive sign, which is consistent with expectations since each measure was normalized into a score that increases with risk.

[2] The FDIC has conducted a number of robustness tests with alternative ratios for capital and earnings, a log transformation of several variables—the balance sheet liquidity and growth-adjusted concentration measures—and alternative dependent variables—CAMELS and the FDIC's internal risk ratings. These robustness tests show that the same set of variables are generally statistically significant in most models; that converting to a score from a raw ratio generally resolves any potential concern related to a nonlinear relationship between the dependent variable and several explanatory variables; and, finally, that alternative ratios for capital and earnings are not better in predicting expert judgment ranking or failure.

Table 2.3—OLS Regression Results: Scorecard Measures

Dependent Variable = Expert Judgment Ranking as of Year-end 2009

Risk Measure (Scored)	2005	2006	2007	2008
Weighted Average CAMELS	0.69 ***	0.54 ***	0.55 ***	0.48 ***
	(0.14)	(0.13)	(0.12)	(0.08)
Tier 1 Leverage Ratio	0.11 ***	0.11 ***	0.05	0.04
	(0.04)	(0.04)	(0.04)	(0.03)
Concentration Measure	0.42 ***	0.40 ***	0.40 ***	0.26 ***
	(0.04)	(0.04)	(0.04)	(0.03)
Core Earnings / Average Assets	0.11 **	0.18 ***	0.21 ***	0.21 ***
	(0.05)	(0.05)	(0.04)	(0.03)
Credit Quality Measure	0.13 **	0.19 ***	0.28 ***	0.33 ***
	(0.06)	(0.05)	(0.04)	(0.04)
Core Deposits / Total Liabilities	0.26 ***	0.23 ***	0.11 ***	0.19 ***
	(0.04)	(0.04)	(0.03)	(0.03)
Balance Sheet Liquidity Ratio	0.14 ***	0.14 ***	0.12 ***	0.06 **
	(0.04)	(0.04)	(0.04)	(0.03)
No. Obs	442	450	452	445
Adjust. R2	0.44	0.46	0.56	0.67

Note: Standard error in parenthesis

* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

The weight for each scorecard measure was generally based on the weight implied by coefficients for 2005 to 2008, with some adjustments to account for more recent experience. The implied weights are computed by dividing the average of scorecard measure coefficients for 2005 to 2008 by the sum of the average coefficients. For example, the average coefficient on the weighted average CAMELS rating was 0.56, which is about 32 percent of the sum of the average coefficients (1.74). The current proposal assigns a weight of 30 percent to this measure. Similarly, the average coefficient of 0.37 on the concentration measure implies a weight of 21 percent (0.37/1.74 = 0.21). The proposal effectively assigns a weight of 17.5 percent (50 percent weight on the ability to withstand asset-related stress score × 35 percent weight on the concentration measure). Table 2.4 shows the average coefficients and implied and actual weights.

Table 2.4—Derivation of Scorecard Weights

Risk Measure (Scored)	Average Coefficients	Implied Weights	Scorecard Weights
Weighted Average CAMELS	0.56	32%	30%
Tier 1 Leverage Ratio	0.08	4%	5%
Concentration Measure	0.37	21%	18%
Core Earnings / Average Assets	0.18	10%	10%
Credit Quality Measure	0.23	13%	18%
Core Deposits / Total Liabilities	0.20	11%	12%
Balance Sheet Liquidity Ratio	0.11	7%	8%
Total	1.74	100%	100%

Logistic Model Results

Table 2.5 shows the results of the logistic regression model, where the dependent variable for the model is whether an institution failed before year-end 2009. The weighted average CAMELS rating, Tier 1 leverage ratio, concentration measure, and core deposits ratio are significant at the 5 percent level in all years and have the expected sign. The core earnings ratio, credit quality measure, and balance sheet liquidity

ratio are not statistically significant in several years.

Table 2.5—Logistic Regression Results
Dependent Variable (1 = Failed; 0= Not failed)

Risk Measure (Scored)	2005	2006	2007	2008
Weighted Average CAMELS	0.03 **	0.06 ***	0.08 ***	0.05 ***
	(0.02)	(0.02)	(0.02)	(0.01)
Tier 1 Leverage Ratio	0.02 ***	0.03 ***	0.03 ***	0.03 ***
	(0.01)	(0.01)	(0.01)	(0.01)
Concentration Measure	0.09 ***	0.11 ***	0.16 ***	0.04 ***
	(0.02)	(0.03)	(0.04)	(0.01)
Core Earnings / Average Assets	0.01	0.00	0.00	0.02 **
	(0.01)	(0.01)	(0.01)	(0.01)
Credit Quality Measure	-0.01	0.00	0.02 ***	0.03 **
	(0.01)	(0.01)	(0.01)	(0.01)
Core Deposits / Total Liabilities	0.03 ***	0.03 ***	0.03 ***	0.04 ***
	(0.01)	(0.01)	(0.01)	(0.01)
Balance Sheet Liquidity Ratio	0.00	0.01	0.00	-0.01
	(0.01)	(0.01)	(0.01)	(0.01)
No. Obs	638	616	570	523
-2 Log Likelihood	296.0	275.1	247.4	204.9

Note: Standard error in parenthesis
* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

OLS Regression Results: CAMELS and the Current Small Bank Financial Ratios

Table 2.6 shows the results of the OLS regression model with the weighted average CAMELS rating only. These results show that while the weighted average CAMELS rating is statistically significant in predicting an expert judgment ranking as of year-end 2009, it only explains a small percentage of the variation in the year-end 2009 expert judgment ranking—particularly in models for 2005 (10 percent) through 2007 (19 percent).

Table 2.6—OLS Regression Results: Weighted Average CAMELS
Dependent Variable = Expert Judgment Ranking as of Year-end 2009

Variable	2005	2006	2007	2008
Weighted Average CAMELS	27.40 ***	30.44 ***	34.51 ***	36.08 ***
	(3.78)	(3.65)	(3.34)	(2.13)
No. Obs	439	445	446	439
Adjust. R2	0.10	0.13	0.19	0.40

Note: Standard error in parenthesis
* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

Table 2.7 shows the results of the OLS regression model with a weighted average CAMELS rating and the current small bank financial ratios. These results show that adding the current small bank model financial ratios improves the ability to predict the year-end 2009 expert judgment ranking; however, the improvement is not as significant as in the model with scorecard model. For example, in 2006, the model using small bank financial ratios explained 21 percent of the variation in the current expert judgment ranking. This compares to 46 percent for the scorecard.

Table 2.7—OLS Regression Results: Measures in Current Small Bank Method
Dependent Variable = Expert Judgment Ranking as of Year-end 2009

Risk Measures	2005	2006	2007	2008
Weighted average CAMELS rating	24.53 *** (3.73)	23.18 *** (3.78)	22.92 *** (3.70)	22.19 *** (2.96)
Tier 1 Leverage Ratio	-0.43 ** (0.19)	-0.47 ** (0.22)	-1.23 *** (0.31)	-0.45 (0.36)
Loans Past Due 30-89 Days/Gross Assets	7.81 ** (3.90)	16.02 *** (3.53)	9.32 *** (1.86)	8.81 *** (2.22)
Nonperforming Assets/Gross Assets	30.00 *** (6.36)	9.97 *** (3.32)	5.00 *** (1.60)	2.15 ** (0.91)
Net Loan Charge-Offs/Gross Assets	-14.21 *** (2.88)	-12.38 *** (2.91)	-3.89 (2.51)	-3.03 ** (1.45)
Net Income before Taxes/Risk-Weighted Asse	-0.03 (0.67)	-0.58 (0.63)	-1.94 ** (0.80)	-0.95 ** (0.43)
Adjusted Brokered Deposit Ratio	0.16 *** (0.06)	0.12 ** (0.06)	0.17 *** (0.05)	0.12 *** (0.04)
No. Obs	445	451	452	445
Adjust. R2	0.19	0.21	0.32	0.48

Note: Standard error in parenthesis
* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

Appendix 3—Conversion of Total Score into Initial Base Assessment Rate

The formula for converting an insured depository institution (IDI's) total score into an initial assessment rate is based on a single-variable logistic regression model, which uses a large IDI's total score as of year-end 2006 to predict whether the large IDI has failed on or before year-end 2009. The logistic model is estimated as:

$$\Pr(Fail_i) = \frac{1}{1 + e^{-(-7.7191 + 0.1064 * Score_{i,2006})}}$$

where

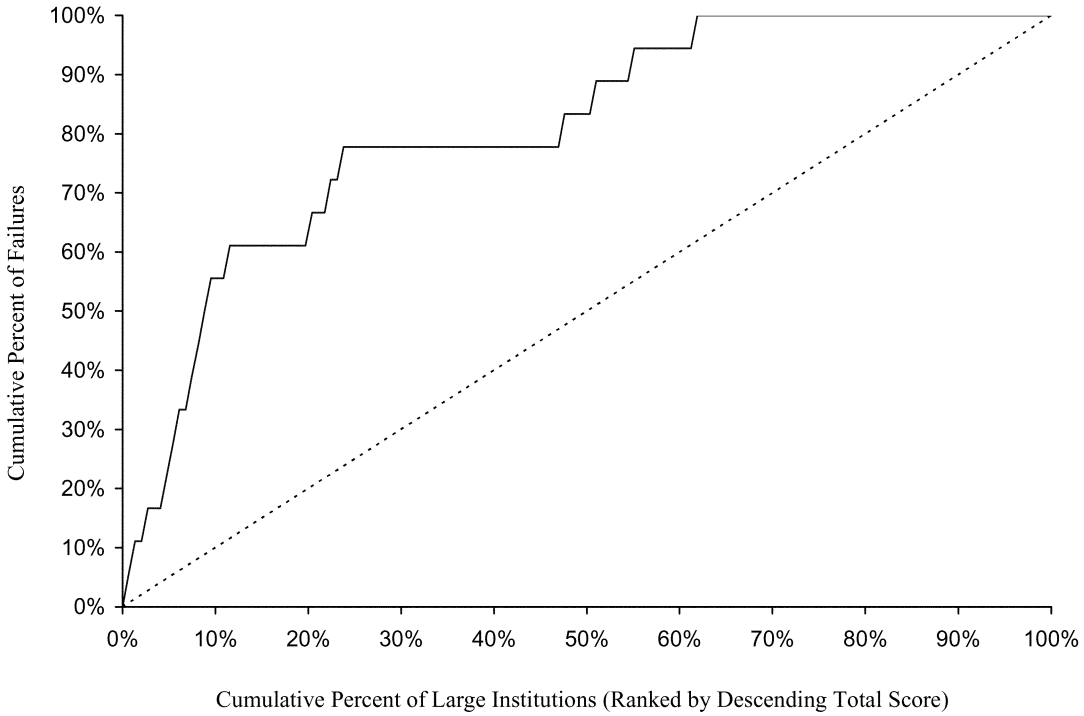
Fail is whether a large IDI *i.* failed on or before year-end 2009 or not; and [1]

Score is a large IDI *i's* total score as of year-end 2006.

Chart 3.1 below shows that the total score can reasonably differentiate large insured depository institutions that failed after 2006. The worst 12 percent of insured depository institutions in terms of their total score as of year-end 2006 accounted for more than 60 percent of failures over the next three years. This indicates a high correlation between the year-end 2006 total score and risk of failure, as results show that the failure rate was five times higher for institutions in the top 12 percent.

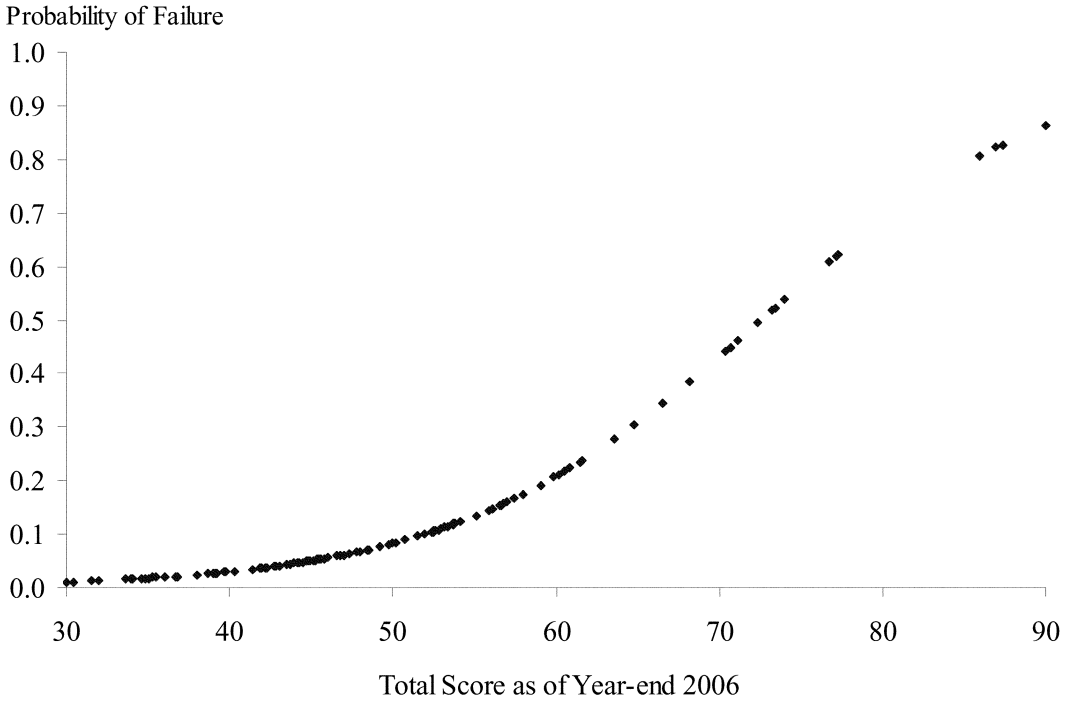
[1] For the purpose of regression analysis, large institutions that received significant government support or that came close to failure are deemed to have failed.

Chart 3.1—Percentage of Large Bank Failures Predicted by Total Score as of Year-end 2006



The plotted points in Chart 3.2 show the large bank failure probabilities estimated from the total scores using the logistic model and the results are nonlinear.

Chart 3.2—Estimated Large Bank Failure Probabilities Based on Total Score as of Year-end 2006



The calculation of the initial assessment rates approximates this nonlinear relationship for scores between 30 and 90.[2] A score of 30 or lower results in the minimum initial base assessment rate and a score of 90 or higher results in the maximum initial base assessment rate. Assuming an assessment rate range of 40 basis points, the initial base assessment rate for an IDI with a score greater than 30 and less than 90 is:

$$Rate = Minimum\ Rate + \left[\left(\left(1.4245 \times \left(\frac{Score}{100}\right)^3\right) - 0.0385\right) \times \left(Maximum\ Rate - Minimum\ Rate\right)\right]$$

Dated at Washington, DC, this 7th day of February 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–3086 Filed 2–24–11; 8:45 am]

BILLING CODE 6714–01–P

[2] The initial assessment rate formula is simplified while maintaining the nonlinear relationship.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 441
Medicaid Program; Community First Choice Option; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 441

[CMS–2337–P]

RIN 0938–AQ35

Medicaid Program; Community First Choice Option

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Section 2401 of the Affordable Care Act (ACA) which establishes a new State option to provide home and community-based attendant services and supports. These services and supports may be offered through the Community First Choice State plan option.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 26, 2011.

ADDRESSES: In commenting, please refer to file code CMS–2337–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2337–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2337–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Carrie Smith, (410) 786–4485.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2337–P and the specific "issue identifier" that precedes the section on which you choose to comment.

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Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Section 2401 of the Affordable Care Act

The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted March 30, 2010) (collectively referred to as the Affordable Care Act) established a new State plan option to provide home and community-based attendant services and supports. Section 2401 of the Affordable Care Act, entitled "Community First Choice Option," adds a new section 1915(k) of the Social Security Act (the Act) that allows States, at their option, to provide home and community-based attendant services and supports under their State plan. This option, available October 1, 2011, allows States to receive a 6 percentage point increase in Federal matching payments for expenditures related to this option.

Under section 1915(k)(1) of the Act, States can provide home and community-based attendant services and supports for individuals who are eligible for medical assistance under the State plan whose income does not exceed 150 percent of the Federal Poverty Level or, if greater, the income level applicable for an individual who has been determined to require an institutional level of care to be eligible for nursing facility services under the State plan and with respect to whom there has been a determination that, but for the provision of such services, the individuals would require the level of care provided in a hospital, a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases, the cost of which could be reimbursed under the State plan. The individual must choose to receive such home and community-based attendant services and supports, and the State must meet certain requirements set forth in section 1915(k)(1) of the Act. Section 1915(k)(1)(A) of the Act requires States electing this option to make available home and community-based attendant services and supports to eligible individuals, under a person-centered

service plan agreed to in writing by the individual, or his or her representative, that is based on a functional need assessment. This assessment will determine if the individual requires assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), or health-related tasks. The services and supports must be provided by a qualified provider in a home or community setting under an agency-provider model, or through other methods for the provision of consumer controlled services and supports as referenced in section 1915(k)(6)(C) of the Act. Section 1915(k)(1)(B) of the Act requires that States make available additional services and supports including the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks, back-up systems or mechanisms to ensure continuity of services and supports and voluntary training on how to select, manage, and dismiss attendants.

Section 1915(k)(1)(C) of the Act prohibits States from providing services and supports excluded from section 1915(k) of the Act, including room and board costs for the individual, special education and related services provided under the Individuals with Disabilities Education Act (Pub. L. 101–476, enacted on October 30, 1990) (IDEA) and vocational rehabilitation services provided under the Rehabilitation Act of 1973 (Pub. L. 93–112, enacted on September 26, 1973), assistive technology devices and services other than back-up systems or mechanisms to ensure continuity of services and supports, medical supplies and equipment, or home modifications. However, some, although not all, of these services can be covered by Medicaid under other authorities. Section 1915(k)(1)(D) of the Act sets forth services and supports permissible under section 1915(k) of the Act that States can provide, including expenditures for transition costs such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility, institution for mental diseases, or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides. States can also provide for expenditures relating to a need identified in an individual's person-centered plan of services that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

Section 1915(k)(2) of the Act provides that States offering this option to eligible individuals during a fiscal year quarter occurring on or after October 1, 2011 will be eligible for a 6 percentage point increase in the Federal medical assistance percentage (FMAP) applicable to the State for amounts expended to provide services under section 1915(k) of the Act (hereinafter referred to as "section 1915(k) services").

Section 1915(k)(3)of the Act sets forth the requirements for a State plan amendment. States must develop and have in place a process to implement an amendment in collaboration with a Development and Implementation Council established by the State that includes a majority of members with disabilities, elderly individuals, and their representatives. States must also provide consumer controlled home and community-based attendant services and supports to individuals on a statewide basis, in a manner that provides such services and supports in the most integrated setting appropriate to the individual's needs, without regard to the individual's age, type or nature of disability, severity of disability, or the form of home and community-based attendant services and supports the individual requires in order to lead an independent life.

In addition, for expenditures during the first full fiscal year of implementation, States must maintain or exceed the level of State expenditures attributable to the preceding fiscal year for medical assistance provided under sections 1905(a), 1915, or 1115 of the Act, or otherwise provided to individuals with disabilities or elderly individuals. States must also establish and maintain a quality assurance system with respect to community-based attendant services and supports that includes standards for agency-based and other delivery models for training, appeals for denials and reconsideration procedures of an individual plan, and other factors as determined by the Secretary. The quality assurance system must incorporate feedback from individuals and their representatives, disability organizations, providers, families of disabled or elderly individuals, and members of the community, and maximize consumer independence and control. The quality assurance system must also monitor the health and well-being of each individual who receives section 1915(k) services and supports, including a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports. The State must also provide information about the provisions of the quality assurance required to each individual receiving such services.

States must collect and report information for the purposes of approving the State plan amendment, providing Federal oversight, and conducting an evaluation, including data regarding how the State provides home and community-based attendant services and supports and other home and community-based services, the cost of such services and supports, and how the State provides individuals with disabilities who otherwise qualify for institutional care under the State plan or under a waiver the choice to receive home and community-based services in lieu of institutional care.

Section 1915(k)(4) of the Act requires that States ensure, regardless of the models used to provide attendant services and supports, such services and supports are to be provided in accordance with the requirements of the Fair Labor Standards Act of 1938 and applicable Federal and State laws regarding the withholding and payment of Federal and State income and payroll taxes; the provision of unemployment and workers compensation insurance; maintenance of general liability insurance; and occupational health and safety.

Section 1915(k)(5) of the Act sets forth the requirements that States provide data to the Secretary for an evaluation and Report to Congress on the provision of home and community-based attendant services and supports. States must provide information for each fiscal year for which attendant services and supports are provided, on the number of individuals estimated to receive section 1915(k) services and supports during the fiscal year; the number of individuals that received such services and supports during the preceding fiscal year; the specific number of individuals served by type of disability, age, gender, education level, and employment status; and whether the specific individuals have been previously served under any other home and community-based services program under the State plan or under a waiver.

B. Background of Home and Community-Based Attendant Services and Supports

The Community First Choice Option continues to move Medicaid toward expanding options to States and individuals for the provision of community-based long-term care services. Consistent with the decision of the United States Supreme Court in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999), this option will support States in their

mission to develop or enhance a comprehensive system of long-term care services and supports in the community that provide beneficiary choice and direction in the most integrated setting. Since the mid-1970s, States have had the option to offer personal care services under their Medicaid State plans. The option was originally provided at the Secretary's discretion, had a medical orientation and could only be provided in an individual's place of residence. Personal care services were mainly offered to assist individuals in activities of daily living, and, if incidental to the delivery of such services, could include other forms of assistance (for example, housekeeping or chores). In the 1980s, some States sought to broaden the scope of personal care services to include community settings for the provision of services to enable individuals to participate in normal life activities.

Through the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, enacted on August 10, 1993) (OBRA 93), the Congress formally included personal care as a separate and specific optional service under the Federal Medicaid statute and gave States explicit authorization, under a new section 1905(a)(24) of the Act, to provide such services outside the individual's residence. This was implemented by final rule published in the September 11, 1997 **Federal Register** (62 FR 47896) that added a new section at § 440.167 describing the option for States to provide a wide range of personal assistance both in an individual's residence and in the community. In 1999, we released additional guidance to clarify that personal care services may include ADLs and IADLs that all qualified relatives, with the exception of "legally responsible relatives", could be paid to provide personal care services and that States were permitted to offer the option of consumer-directed personal care services.

Additionally, the Omnibus Reconciliation Act of 1989 (Pub. L. 101–239, enacted on December 19, 1989) (OBRA 89), revised the Early Periodic Screening and Diagnosis and Treatment Benefit to include the requirement that all section 1905(a) services are mandatory for individuals under the age of 21 if determined to be medically necessary in accordance with section 1905(r) of the Act.

Furthermore, before 1981, the Medicaid program provided limited coverage for long-term care services in non-institutional, community-based settings. Medicaid's eligibility criteria and other factors made institutional care much more accessible than care in the community.

Medicaid home and community-based services (HCBS) were established in 1981 as an alternative to care provided in Medicaid institutions, by permitting States to waive certain Medicaid requirements upon approval by the Secretary. Section 1915(c) of the Act was added to title XIX by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, enacted on August 13, 1981) (OBRA 81). Programs of HCBS under section 1915(c) of the Act are known as "waiver programs", or simply "waivers" due to the authority to waive certain Medicaid requirements.

Since 1981, the section 1915(c) HCBS waiver program has afforded States considerable latitude in designing services to meet the needs of people who would otherwise require institutional care. In 2010, approximately 315 approved HCBS waivers under section 1915(c) of the Act serve nearly 1 million elderly and disabled individuals in their homes or alternative residential community settings. States have used HCBS waiver programs to provide numerous services designed to foster independence; assist eligible individuals in integrating into their communities; and promote self-direction, personal choice, and control over services and providers. The addition of section 1915(i) of the Act in 2005 affords some of the same flexibility and service coverage through the State plan without a waiver.

The section 1915(k) benefit does not diminish the State's ability to provide any of the existing Medicaid home and community-based services. States opting to offer the Community First Choice Option under section 1915(k) of the Act can continue to provide the full array of home and community-based services under section 1915(c) waivers, section 1115 demonstration programs, mandatory State plan home health benefits, and the State plan personal care services benefit. Community First Choice provides States the option to offer a broad service package that includes assistance with ADLs, IADLs, and health-related tasks, while also incorporating transition costs and supports that increase independence or substitute for human assistance.

Another important aspect to this background is the passage of the Americans with Disabilities Act of 1990 (Pub. L. 101–336, enacted July 26, 1990) (ADA), and the *Olmstead* v. *L.C.,* U.S. Supreme Court decision. In particular, Title II of the ADA prohibits discrimination on the basis of disability by State and local governments and requires these entities to administer their services and programs, in the most integrated setting appropriate to the needs of qualified individuals with disabilities. In applying the most integrated setting mandate, the U.S. Supreme Court ruled in *Olmstead* that unnecessary institutionalization of individuals with disabilities constitute discrimination under the ADA. Under *Olmstead,* States may not deny a qualified individual with a disability a community placement when: (1) Community placement is appropriate; (2) the community placement is not opposed by the individual with a disability; and (3) the community placement can be reasonably accommodated.

As self-direction is a key component to Community First Choice, this service delivery model is another important aspect to the background of this provision. Two national pilot projects demonstrated the success of self-directed care. During the 1990's, the Robert Wood Johnson Foundation funded these projects which evolved into Medicaid funded programs under section 1915(c) of the Act and the "Cash and Counseling" national section 1115 demonstration programs. Evaluations were conducted in both of these national projects. Results in both projects were similar—persons directing their personal care experienced fewer unnecessary institutional placements, experienced higher levels of satisfaction, had fewer unmet needs, experienced higher continuity of care because of less worker turnover, and maximized the efficient use of community services and supports. The Deficit Reduction Act of 2005 (Pub. L. 109–171, enacted on February 8, 2006) (DRA), established section 1915(j) of the Act which provided a State plan option for States to utilize this self-direction service delivery model without needing the authority of a Section 1115 demonstration.

II. Provisions of the Proposed Regulations

In the following discussion, we refer to particular home and community-based attendant services and supports offered under section 1915(k) of the Act as Community First Choice services and supports. We refer to the "Community First Choice Option" when describing the collective requirements of section 1915(k) of the Act for the State plan option.

A. Eligibility (§ 441.510)

Section 1915(k)(1) of the Act requires that in order to receive services under the Community First Choice Option, individuals must be eligible for

Medicaid under an eligibility group covered by the State plan. This section does not create a new eligibility group. Individuals who are not eligible for Medicaid under a group covered under the State Medicaid plan are not eligible for the State plan Community First Choice Option, even if they otherwise meet the requirements for the option. Individuals eligible under the State Medicaid plan whose income does not exceed 150 percent of the Federal Poverty Level (FPL) are eligible for the Community First Choice Option without requiring a determination of institutional level of care. In determining whether the 150 percent of the FPL requirement is met, the regular rules for determining income eligibility for the individual's eligibility group under the State plan apply, including any income disregards used by the State for that group under section 1902(r)(2) of the Act.

Individuals eligible under the State Medicaid plan whose income is greater than 150 percent of the FPL are eligible for the Community First Choice Option if it has been determined such individuals need the level of care required under the State Medicaid plan for coverage of nursing facility services. The State must determine that but for the provision of the home and community-based attendant services and supports, the individual would require the level of care provided in a hospital, a nursing facility, intermediate care facility for the mentally retarded or an institution for mental diseases, the cost of which would be reimbursed under the State plan. For example, section 1902(a)(10)(A)(ii)(XIII) of the Act defines an optional eligibility group known as working disabled. The income standard for this group is 250 percent of the FPL. An individual in this eligibility group with income that does not exceed 150 percent of the FPL would be eligible for CFC services without a level of care determination. An individual in the same eligibility group with income that exceeds 150 percent of the FPL would need to have a level of care determination to be eligible for CFC services. Additionally, individuals who are eligible for Medicaid under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act, for example, the special income level group for institutionalized individuals, could be eligible to receive CFC services. These individuals would have to receive at least 1 section 1915(c) home and community-based waiver service per month. We propose to implement this eligibility requirement at § 441.510.

As the need for a level of care determination is directly related to an individual's income level in section 1915(k)(1) of the Act, we propose to require an annual verification of income for all individuals receiving services under the section 1915(k) State plan option. We propose to implement this requirement at § 441.510.

B. Statewideness (§ 441.515)

Section 1915(k)(3)(B) of the Act requires that a State that chooses to provide the Community First Choice Option do so for individuals on a statewide basis, in a manner that provides such services and supports in the most integrated setting appropriate to the individual's needs, and without regard to the individual's age, type or nature of disability, severity of disability, or the form of home and community-based attendant services and supports that the individual requires in order to lead an independent life. We propose at § 441.515 to adopt this statutory language as our definition.

C. Required Services (§ 441.520)

Section 1915(k)(1)(B) of the Act provides detailed requirements for the services and supports included in the Community First Choice Option. Therefore at § 441.520, we propose the following services must be available under the Community First Choice option:

- Assistance with ADLs, IADLs, and health related tasks through hands-on assistance, supervision or cueing.
- The acquisition, maintenance and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.
- Back-up systems or mechanisms to ensure continuity of services and supports.
- Voluntary training on how to select, manage, and dismiss attendants.

With regard to back up systems or mechanisms to ensure continuity of services and supports, we propose at § 441.505 that such devices may include personal emergency response systems, pagers, or any other appropriate mobile electronic device that may be used to ensure continuity of services and supports.

The Community First Choice Option requires the utilization of a person-centered planning process. A key component of the Community First Choice option is to allow individuals to self direct the provision of services and supports. Individuals must have the authority to hire, fire, and train attendants to provide services tailored to the individuals' needs. Therefore, we propose at § 441.520(a)(6) to require States to develop and provide a training program for individuals (or representative) on how to select, manage and dismiss attendants. Consistent with the philosophy of self-direction, this training must be voluntary, and may not be a mandatory requirement for the individual to receive services under this option.

Section 1915(k)(1)(D) of the Act provides that States may allow an individual to purchase permissible services and supports. We propose to implement this option at § 441.520(b). At a minimum, permissible services and supports include expenditures for transition costs such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to transition from a nursing facility, institution for mental disease, or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides. We believe that the primary focus of Community First Choice is to remove barriers that prevent individuals from returning to the community or remaining in the community, thus avoiding unnecessary or premature institutionalization. Section 1915(k)(1)(D)(ii) of the Act permits States to make expenditures available for individuals to acquire items that increase independence or substitute for human assistance, to the extent that the expenditures would otherwise be made for the human assistance and are related to a need identified in an individual's person-centered plan. Based on our experience with the Cash and Counseling Demonstrations, and authorities under sections 1915(j) and 1915(c) of the Act, we know that many individuals do avail themselves of and benefit from this option and use this flexibility to purchase items that allow them greater independence, such as non-medical transportation services, or that substitute for human assistance, such as a microwave oven. We propose at § 441.520(b)(2), when individuals utilize this option that items purchased must relate to a need identified in the service plan.

Based on our experience with Cash and Counseling, we found that some States limited participants' purchases to a list of allowable items for which no prior approval was necessary. Still, other States required prior approval for all items, while others provided a list of allowable items and required prior approval for other items not on the list. Each permissible purchase was determined based on an identified goal

in an individual's service plan. Each State developed procedures that governed how participants could save an amount of their monthly budget and how and at what intervals the State would recoup funds that were not spent according to the purchase plan. The Community First Choice Option differs from Cash and Counseling and the section 1915(j) State plan Option in that an individual is not required to save an amount in a budget to purchase items that increase independence or substitute for human assistance. Therefore, in Community First Choice Option these purchases are permissible for inclusion in the service plan and service budget if applicable. CMS believes that permissible purchases will be a particularly useful tool for States to promote community integration.

D. Excluded Services (§ 441.525)

In § 441.525, consistent with the provisions of section 1915(k) of the Act, we propose the following services are excluded from the Community First Choice Option:

- Room and board costs (except with respect to the transition costs identified above).
- Special education and related services provided under the IDEA.
- Vocational rehabilitation services provided under the Rehabilitations Act of 1973.
- Assistive technology devices and assistive technology services other than those defined in § 441.520(a)(5).
- Medical supplies and equipment.
- Home modifications.

The exclusion of room and board costs is consistent with section 1905(a) of the Act, which limits Medicaid coverage of room and board to an inpatient setting only. The goal of the Community First Choice option is to provide attendant and support services in the community, as such, services provided in an inpatient setting are excluded from coverage. While attendant services and supports may be provided in a residential setting in the community, only the costs of the services and supports, not the room and board costs of the residential setting, will be covered.

The IDEA ensures every child with a disability has available a free appropriate public education that includes special education and related services. When services are identified in an Individualized Education Program (IEP) or an Individualized Family Service Plan (IFSP), Medicaid will only pay for services determined to be medically necessary. Therefore, at § 441.525, we propose that services related to education only are excluded from this section.

The Rehabilitation Act of 1973 provides for direct services to people with disabilities which help them to become qualified for employment. Vocational services are those that teach specific skills required by an individual to perform tasks associated with performing a job. Therefore, at § 441.525, we propose the general prohibition established by section 1915(k) of the Act excluding vocational rehabilitation services provided under the Rehabilitation Act of 1973.

We also propose at § 441.525 that Community First Choice would not include services furnished through another benefit or section under the Act. Per section 1915(k)(1)(C) of that Act, we propose at § 441.525 the exclusion of the following services: Assistive technology (other than what is described in § 441.520(a)(5); Medical supplies and equipment; and home modifications.

The statute specifically excludes assistive technology devices and assistive technology services (other than back-up systems or mechanisms), medical equipment and home modifications. However, the statute does not define such items and furthermore, the statute provides that the excluded services and supports are "subject to subparagraph (D)" which defines permissible services and supports to include expenditures relating to a need identified in an individual's person-centered plan of services that increase independence or substitute for human assistance. In general, the terms "assistive technology devices" and "assistive technology services" may be broadly interpreted to include items and services necessary for an individual to make the transition from an institution to a community-based setting, or that increase independence or substitute for human assistance. In addition, some medical equipment and environmental adaptations may make the provision of human assistance feasible when it would not otherwise be provided. These types of items could be covered under sections 1915(k)(1)(D)(i) and (ii) of the Act. For example, eating and cooking utensils can be fitted with oversized handles for easier gripping. These "assistive devices" can enable an individual with limited hand function to continue to prepare meals for himself or herself. Further examples would include items such as bedside controls for lights and other appliances to increase the ability of mobility impaired individuals to control the lighting, temperature or other conditions of their home without getting out of bed. Wheelchair lifts and stair-climbs can provide an individual with full access and mobility throughout a multi-level home. Other self-direction programs have permitted the inclusion of certain items that could be broadly defined as assistive technology, medical equipment, and home modifications. To ensure that items or services that could be covered under sections 1915(k)(1)(D)(i) or (ii) of the Act are not excluded, we interpret the provision to prohibit service plans from identifying assistive technology or services, medical equipment or home modifications as the only needed service in an individual's plan of services or supports. Therefore, we are proposing that in Community First Choice some items or services that could be classified as assistive technology devices or services, medical equipment or home modifications may be covered, but only when based on a specific need in the person-centered service plan, when used in conjunction with other home and community-based attendant services. We invite comment on this proposal. We further propose to allow States to determine at what point the amount of funds to purchase such devices and adaptations places them in the statutorily excluded categories. We also invite comments on this proposal.

E. Setting (§ 441.530)

Section 1915(k)(1)(A)(ii) of the Act provides that a home and community-based setting does not include a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded. We propose at § 441.530 to adopt this statutory language in our regulations.

In the June 22, 2009 **Federal Register** (74 FR 29453), we published the Home and Community-Based Services (HCBS) Waivers Advance Notice of Proposed Rulemaking (ANPRM) to seek public input on strategies to define home and community with regard to waivers under section 1915(c) of the Act. We recognize the important role that Medicaid plays in States' efforts to ensure compliance with the ADA and the *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) U.S. Supreme Court decision. In the *Olmstead* decision, the Court affirmed a State's obligation to serve individuals in the most integrated setting appropriate to their needs. The Court held that the unjustified institutional isolation of people with disabilities is a form of unlawful discrimination under the ADA. We seek to assist States' objective to meet these ADA and *Olmstead* obligations. However, a State's Olmstead obligations under the ADA and section 504 of the

Rehabilitation Act are not defined by, or limited to, the scope or requirements of the Medicaid program and nothing in this regulation should be construed as limiting a State's obligation to comply with the integration requirements under the ADA or section 504 of the Rehabilitation Act.

Notwithstanding our continuing efforts to gain stakeholder input on the nature of HCBS settings, we are proposing to clarify that certain settings are clearly outside of what would be considered home and community-based because they are not integrated into the community. Section 1915(k)(1)(A)(ii) of the Act provides that services must be provided in a home or community setting, which excludes nursing facilities, institutions for mental diseases, and intermediate care facilities for the mentally retarded. However, there may be instances in which individuals reside in alternative or subsidiary residential settings on the grounds of or located adjacent to such institutional facilities, which are not licensed as institutions for the purpose of Medicaid reimbursement or under State licensing rules. We are proposing to clarify that home and community settings may not include a building that is also a publicly or privately operated facility which provide inpatient institutional treatment or custodial care; or in a building on the grounds of, or immediately adjacent to, a public institution or disability-specific housing complex, designed expressly around an individual's diagnosis that is geographically segregated from the larger community, as determined by the Secretary. To maintain consistency across the Medicaid program, we anticipate adopting this same clarification for services provided under section 1915(c) of the Act and other authorities permitting coverage of home and community-based services under Medicaid.

F. Assessment of Need (§ 441.535)

Section 1915(k)(1)(A)(i) of the Act requires that States conduct an assessment of individuals' functional need on which to base the person-centered service plan. We propose to implement this requirement at § 441.535. An assessment of an individual's needs, strengths, and preferences is crucial because it forms the basis for the identification of the needed services and supports that will be authorized in the individual's subsequent person-centered service plan. The assessment should include a determination of whether there are any persons available to support the individual, including family members. These persons may be able to provide unpaid personal assistance, or fulfill the more formal roles such as acting in the capacity of a paid provider of attendant services or as an individual's representative. We propose to require in § 441.535 that the assessment include a face-to-face meeting with the individual ("individual" meaning in this context, if applicable, the individual and the individual's authorized representative when appropriate).

For consistency among Medicaid program benefits and in keeping with our decisions for implementation of the Self-directed Personal Assistance Services State plan Option under section 1915(j) of the Act, we do not prescribe the assessment tool to be used by States, but we expect that the assessment will include a standardized set of data elements, key system functionality, and workflow that will be sufficiently comprehensive to support the determination that an individual would require attendant care services and supports under the Community First Choice State Option and the development of the individual's subsequent service plan and budget. We propose at § 441.535(a), as in section 1915(j) of the Act, that the assessment include information about an individual's health condition, personal goals and preferences for the provision of services, identified functional limitations, age, school participation status, employment, household, and other factors that are relevant to the authorization and provision of services, and support the finding for need of home and community-based attendant services and supports and development of the service plan and budget. We are currently working to determine universal core elements to include in a standard assessment for consistency across programs. As these elements are identified, it is expected States will incorporate these elements in the assessment of need to be used for Community First Choice. We invite comments on the elements that should be included in this list.

Finally, in § 441.535(c), we propose to require that the assessment of need is conducted at least every 12 months and as needed when the individual's needs and circumstances change significantly, or as requested by an individual or their representative, in order to revise the service plan.

G. Service Plan (§ 441.540)

Section 1915(k)(1)(A)(i) of the Act require a person-centered approach to establishing a service plan, based on an assessment of need, developed in collaboration with an individual ("individual" meaning in this context, if applicable, the individual and the individual's authorized representative) choosing to receive home and community-based attendant services and supports under the Community First Choice State Option. In § 441.540, we propose to require that based on the assessment of need specified in § 441.535, the State must develop (or approve, if the Plan is developed by others) a written service plan, in collaboration with the individual (including, for purposes of this paragraph, the individual and the individual's authorized representative if applicable). The service plan must be created using a person-centered and directed planning process.

For clarification and consistency among programs, our expectation regarding person-centered services and supports is that the plan reflects what is important to the individual and important for his or her health and welfare. The person-centered approach is a process, directed by the individual with long-term support needs, or by another person important in the life of the individual who the individual has freely chosen to direct this process, intended to identify the strengths, capacities, preferences, needs, and desired outcomes of the individual. The person-centered process includes the opportunity for the individual to choose others to serve as important contributors to the planning process.

These participants in the person-centered planning process enable and assist the individual to identify and access a personalized mix of paid and non-paid services. This process and the resulting service plan will assist the individual in achieving personally defined outcomes in the most integrated community setting in a manner that reflects what is both important for the individual to meet identified support needs and what is important to the individual to ensure delivery of services in a manner that reflects personal preferences and choices and assures health and welfare. The individual identifies planning goals to achieve these personal outcomes in collaboration with those that the individual has identified. The identified personally-defined outcomes, preferred methods for achieving them and the training supports, therapies, treatments, and other services the individual needs to achieve those outcomes become part of the written services and support plan, also known as plan of care.

Based on our experience with States' self-direction waivers and demonstrations, we are aware that States have historically implemented

the person-centered planning process differently. Based on the above clarification of person-centered planning and to promote consistency among programs, we propose to require, at § 441.540(a), a person-centered planning process. We propose that the person-centered planning process would:

- Include people chosen by the individual;
- Provide necessary support to ensure that the individual has a meaningful role in directing the process;
- Occur at times and locations of convenience to the individual;
- Reflect cultural considerations of the individual;
- Include strategies for solving conflict or disagreement within the process, including clear guidelines for the management of conflict of interest concerns among planning participants;
- Include opportunities for periodic and ongoing plan updates as needed or requested by the individual; and
- Offer choices to the individual regarding the services and supports they receive and from whom.

We propose at § 441.540(b) that the plan resulting from this process must reflect the services that are important for the individual to meet individual services and support needs as assessed through a person-centered functional assessment, as well as what is important to the person with regard to preferences for the delivery of such supports. Commensurate with the level of need of the individual, the plan must reflect the individual's strengths and preferences, as well as clinical and support needs (for example, as identified through a person-centered functional assessment). The plan should include individually identified goals, which may include goals and preferences related to relationships, community participation, employment, income and savings, health care and wellness, education, and others.

The plan should reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals and who provides them. The plan should reflect risk factors and measures in place to minimize them including back-up strategies when needed. The plan should be signed by all individuals and providers responsible for its implementation, should be understandable to the individual receiving services and the individuals important in supporting him or her, and should include a timeline for review. The plan should identify the individual or entity responsible for monitoring the plan and should be distributed to everyone involved (including the participant) in the plan. The plan should also be directly integrated into self-direction where individual budgets are used and should prevent the provision of unnecessary or inappropriate care. We invite comment on the person-centered process and planning elements of this proposed rule.

We would also propose at § 441.540(c) a minimum list of policies and procedures associated with service plan development that must be completed and included by the State. We believe these are necessary to ensure the proper administration and development of the service plan. Policies and procedures should ensure that the responsibilities for assessment of need and service plan development are identified, the planning process is timely, the participant's needs are assessed and services meet the needs. When determining the timeframe in which the planning process should occur, we expect States to establish guidelines that support a timeframe that responds to the needs of the individual, thus allowing access to needed services as quickly as possible. Additionally, the State must ensure the conflict of interest standards for assessment of need and service plan development apply to all individuals and entities, public or private. These standards at a minimum must ensure that the individuals and entities conducting the assessment of need and developing the service plan are not related by blood or marriage to the individual or to any paid caregiver of the individual, financially responsible for the individual, empowered to make financial or health-related decisions on behalf of the individual, and would not benefit financially from the provision of assessed needs and services.

Section 1915(k)(1)(A)(i) of the Act requires that the service plan be agreed to in writing by the individual or, as appropriate, the individual's representative. We propose at § 441.540(d) to require that the service plan must be finalized and agreed to in writing by the individual or, as appropriate, the individual's representative and that a copy of the plan must be provided to the individual.

Finally, in § 441.540(e), we propose to require that the service plan be reviewed and revised upon reassessment of need at least every 12 months, when the individual's circumstances or needs change significantly and at the individual's request.

H. Service Models (§ 441.545)

Section 1915(k)(1)(A)(iii) of the Act requires that the Community First Choice Option be provided under an agency-provider model or other model. Section 1915(k)(6)(C)(ii) of the Act defines other models to mean methods, other than the agency-provider model, for the provision of consumer controlled services and supports. The statute provides that such models may include vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

We propose at § 441.545 that a State may choose one or more of the service delivery models defined in the statute. In § 441.545(a) and (b), we have categorized these models into two main groups, the Agency Model and the Self-directed Model with Service Budget. We have elected the use of the term self-directed rather than consumer controlled to be consistent with terminology in other regulatory provisions that offer this type of service delivery model including sections 1915(i) and 1915(j) of the Act. In § 441.545(a), we propose to reflect the statutory definition of the agency model as a service delivery method in which services and supports are provided by entities through a contract.

Based on our experience with self-directed programs, we are aware that States may choose to allow individuals to self-direct services under a traditional agency model or an "agency with choice" model, which utilizes a co-employment relationship between the individual and an agency. Under the traditional agency model, the individual retains hiring and firing authority of personal care attendants. The "agency with choice" utilizes a co-employment relationship between the individual and the agency. We interpret the definition of "agency-provider model" in section 1915(k)(6)(C)(i) of the Act to include such delivery options as allowable under Community First Choice as the agency model.

In § 441.545(b)(1), (b)(2) and (b)(3), we propose to further define the categories within the Self-directed Model with Service Budget to include the models specified in the statute including financial management entity, direct cash, and vouchers. We have elected to use the term financial management entity rather than fiscal agent to be consistent with other regulatory provisions that offer this type of service delivery model.

In § 441.545(b)(1), we propose to require that the financial management entity perform specific functions that include, but are not limited to, the following: Collect and process timesheets of the individual's workers; process payroll, withholding, filing and payment of applicable Federal, State

and local employment related taxes and insurance; maintain a separate account for each individual's budget; track and report disbursements and balances of individual's funds; process and pay invoices for services in the service plan; and provide to the individual periodic reports of expenditures and the status of the approved service budget. We propose to adopt these functions to be consistent with section 1915(j) of the Act in which a self-directed service delivery model is also defined. We propose in § 441.545(b)(1)(vii) that States may perform the functions of a financial management entity internally or use a vendor organization that has the capabilities to perform the required task in accordance with the applicable IRS requirements. Again, we propose this provision to be consistent with flexibility offered in section 1915(j) of the Act.

We propose in § 441.545(b)(2) that the State have the option of disbursing cash prospectively to individuals self-directing their Community First Choice Option. This Direct Cash option is specified in section 1915(k)(6)(C)(ii) of the Act. To be consistent with the option under section 1915(j) of the Act, which also allows for the direct payment of cash, we further propose that if a State elects this option, it must meet the following requirements: Ensure compliance with all applicable requirements of the Internal Revenue Service, including but not limited to, retaining required forms and payment of FICA, FUTA and State unemployment taxes; permit individuals, or their representatives as applicable, using the cash option to choose to use the financial management entity for some or all of the functions; make available a financial management entity to an individual who has demonstrated, after additional counseling, information, training, or assistance that the individual cannot effectively manage the cash option described in this section. If the cash option is the only model offered by the State for Community First Choice, then the State may require an individual to utilize the financial management entity services under the cash option, but must provide the conditions under which this would be enforced after additional counseling, information, training or assistance are unsuccessful.

In § 441.545(b)(3), we propose that the State also have the option of issuing vouchers as a self-directed service delivery model. We propose that if the State elects this option that it must ensure compliance with all applicable requirements of the Internal Revenue Service.

I. Additional Service Plan Requirements for Self-Directed Model With Service Budget (§ 441.550)

Section 1915(k)(1)(A)(i) of the Act requires that the Community First Choice Option be provided through a person-centered plan of services and supports that is based on an assessment of functional need. While the general requirements of the service plan are proposed in § 441.550, to clarify our expectations for a service plan when the State elects the option of a Self-Directed Service Model with Service Budget and to be consistent with the self-directed service delivery model under section 1915(j) of the Act, we propose that the service plan convey authority to the individual to perform, at a minimum, specific tasks. In § 441.550, we propose these tasks include the ability to recruit, hire (including specifying worker qualifications), fire, supervise, and manage workers in the provision of Community First Choice Option services and supports. We propose that the expectations for managing workers include determining worker duties, scheduling workers, training workers in assigned tasks, and evaluating workers' performance. In addition, we propose that the service plan describe the ability of the individual to determine the amount paid for a service, support, or item, as well as the ability to review and approve provider invoices. It is the approval of the service plan that authorizes the individual to undertake these activities as part of the self-directed service delivery model. The service plan must encompass both the general decision-making authority that an individual has and outline the individualized services and supports to address the individual's needs, abilities, preferences and choices. In our experience with self-directed programs these components of the service plan have been critical elements in the implementation of successful programs. Therefore, we propose to adopt the same elements in this provision of self-directed services.

J. Support System (§ 441.555)

Based on our experience with self-direction programs, we are aware that the support system provided by the State is a critical element of the service delivery model. Therefore, to maintain consistency and to reflect our policy relating to self-direction, in § 441.555 we propose the requirement that the State have in place a support system. While we do not prescribe the way States are to design their support system, in order to allow flexibility, based on our experience, we include in the proposed regulation a minimum list of activities for which individuals may need information, counseling, training, or assistance, but States may offer additional activities. Generally, the activities requiring support include participant rights information and how the self-directed model of service delivery operates.

K. Service Budget Requirements (§ 441.560)

While section 1915(k) of the Act does not specifically address the requirement for an individual to have authority over a budget, in § 441.560 we have proposed specific service budget requirements based on experience with the section 1915(j) self-directed service delivery model which utilizes the options of financial management entities and direct cash payments. The requirements of section 1915(j) of the Act were supported by the experience of section 1115 demonstrations and proven to be successful models for implementation of a self-directed service model with a service budget. The service budget amount is the cap on the amount of funds available to an individual with which to purchase self-directed Community First Choice Option services and supports. Therefore, in § 441.560(a), we require that a service budget be developed and approved by the State and include specific items such as the specific dollar amount, how the individual is informed of the amount, and the procedures for how the individual may adjust the budget.

In § 441.560(b), we propose that the budget methodology set forth by the State meet certain criteria such as being objective and evidence based, be applied consistently to individuals in the program, and be included in the State plan. In addition, we propose the budget methodology include calculations of the expected costs of Community First Choice Option services and supports if those services and supports were not self-directed. We recognize in § 441.560(b)(5) that States may place monetary or budgetary limits on self-directed Community First Choice Option services. Therefore, if a State does so, we would require that the State have a process in place that describes the limits and the basis for the limits, and any adjustments that will be allowed and the basis for the adjustments, such as an individual's health and welfare.

Additionally, we propose to require certain beneficiary safeguards in light of these possible limitations. First, we propose that States have procedures to adjust a budget when a reassessment indicates a change in a participant's

medical condition, functional status, or living situation to ensure that the budget amount is appropriate to the individual's current needs. Second, we propose that States have a method of notifying participants of the amount of any limit that applies to an individual's Community First Choice Option services and supports. Finally, we propose that the budget not restrict access to other medically necessary care and services furnished under the State plan and approved by the State but not included in the budget. Based on our experience in other self-directed programs like those specified in section 1915(j) of the Act, these components of the budget and the budget methodology are critical elements of a successful program. We invite comments on this approach.

L. Provider Qualifications (§ 441.565)

Section 1915(k)(1)(A)(iv)(III) of the Act requires that Community First Choice State Option services and supports be provided by individuals, including family members, who are qualified to provide such services. We reflect these requirements in the proposed regulation at § 441.565. We propose in § 441.565(a) to require that States provide assurance that necessary safeguards have been taken to protect the health and welfare of the enrollees in the Community First Choice State Option by provision of adequate standards for all types of providers of attendant services and supports under the option. States must define qualifications for providers of attendant services and supports under the agency model.

Self-direction is an integral component of the Community First Choice State Option. This is reflected in § 441.565(b) through (d). To ensure that individuals maintain the ability to participate in and control the provision of Community First Choice Option attendant services and supports, we propose in § 441.565(b) that individuals can choose any qualified provider, including family members, to provide such services. In § 441.565(c), we propose that individuals retain the right to train their workers in the specific areas of attendant services and supports needed by the individual and to perform the needed assistance in a manner that comports with participants' personal preferences, as well as their needs, which we believe is an important component of self-direction based on our experience with the self-direction waiver and demonstration programs. In this way, workers benefit from clear instructions about how to effectively and appropriately deliver the attendant services, and any potential dissatisfaction with the way services are being delivered can be averted. We further propose, at § 441.565(d), that individuals retain the right to establish additional staff qualifications based on their needs and preferences. Again, we believe that the individual is in the best position to set forth the particular staff qualifications needed to meet the particular preferences of the individual. For example, if the individual communicates best using American Sign Language (ASL), the individual may require the worker to be able to communicate using ASL.

M. State Assurances (§ 441.570)

Section 1915(k)(3)(C) of the Act requires that, for the first full fiscal year in which the State plan amendment is implemented, the State must maintain or exceed the level of expenditures for services provided under sections 1905(a), section 1915, or section 1115 of the Act, or otherwise, to individuals with disabilities or elderly individuals attributable to the preceding fiscal year. We interpret this requirement to mean that, for the first 12 months the State chooses to offer this option in the State plan, the State's share of Medicaid expenditures for individuals with disabilities or elderly individuals must remain at the same level or be greater than expenditures from the previous year. We also interpret this requirement to be limited to personal care attendant services. We propose to implement this requirement at § 441.570. States will need to identify the existing programs for individuals with disabilities and elderly individuals and the related expenditures to be monitored for this requirement and calculation. We will provide future guidance on the format of this reporting requirement.

Section 1915(k)(4) of the Act requires States that elect this option to comply with certain laws in the provision of the Community First Choice Option regardless of which service delivery model the State elects. Specifically, the statute requires that services and supports are provided in accordance with the Fair Labor Standards Act of 1938 and applicable Federal and State laws regarding withholding and payment of Federal and State income and payroll taxes; provision of unemployment and workers compensations insurance; maintenance of general liability insurance; and occupational health and safety. We propose to include these assurances as specified in the statute at § 441.570(b).

N. Development and Implementation Council (§ 441.575)

Under this State plan option, the statute requires a State to consult and collaborate with a Development and Implementation Council during the development and implementation of a State plan amendment under this subsection. Section 1915(k)(3)(A) of the Act requires that the council include a majority of members with disabilities, elderly individuals, and their representatives. We recognize that stakeholder input is an important piece of the Medicaid program and agree that this council will provide additional opportunities for stakeholder collaboration. We propose to set forth this requirement as defined by the statute at § 441.575. We invite comment on how States can achieve robust stakeholder input including transparency in the selection process and the activities of the council.

O. Data Collection (§ 441.580)

Section 1915(k)(5)(B) of the Act requires that States provide CMS with information regarding the provision of home and community-based attendant services and supports under the Community First Choice Option for each fiscal year for which such services and supports are provided. The statute requires States to provide data including the number of individuals who are estimated to receive Community First Choice Option services and supports during the fiscal year, the number of individuals that have received such services and supports during the preceding fiscal year, the specific number of individuals served by type of disability, age, gender, education level and employment status, and whether the specific individuals have been previously served under any other home and community-based services program under the State plan or under a waiver. We propose to adopt these requirements as detailed in the statute at § 441.580. We will provide future guidance on the format of this reporting requirement. Section 1915(k)(3)(E) of the Act requires States to collect and report information for the purposes of approving the State plan amendment, providing Federal oversight and conducting an evaluation of the provision of the Community First Choice State Option. The data collected through this requirement and the quality assurance system will help determine how States are currently providing home and community-based services, the cost of those services, and whether States are currently offering individuals with disabilities who otherwise qualify for institutional care

under Medicaid the choice to instead receive home and community-based services, as required by the U.S. Supreme Court in *Olmstead* v. *L.C.* (1999). We will provide future guidance on the format of this reporting requirement.

P. Quality Assurance System (§ 441.585)

We propose in § 441.585 the requirements for the comprehensive continuous quality assurance system that the State must establish and maintain as set forth in section 1915(k)(3)(D) of the Act. The system must employ measures for program performance and quality of care, standards for delivery models, mechanisms for discovery and remediation, and quality improvements proportionate to the benefit and number of individuals served. The system must also include a quality improvement strategy that reflects the nature and scope of the benefit the State will provide. The statute also requires stakeholder input and feedback to be incorporated in the quality assurance system and for information regarding quality assurance to be provided to each individual receiving Community First Choice State Option services. We propose to adopt these requirements in § 441.585(a)(4) and § 441.585(b). We will review the State's description of the quality assurance system and improvement plan when we review the State's Medicaid plan amendment electing the Community First Choice State Option.

In § 441.585(a)(1), we propose to require States to have program performance measures, appropriate to the scope of the benefit, designed to assess the State's overall system for providing home and community-based attendant services and supports.

In § 441.585(a)(2), we propose to require States to have quality of care measures that may be used to measure individual outcomes associated with the receipt of community-based attendant services and supports, such as function indicators and measures of individual satisfaction. These measures must be made available to CMS upon request and must include a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connections with provision of Community First Choice services as well as quality indicators approved or prescribed by the Secretary.

In § 441.585(a)(3), we propose to require States to have standards for agency-based and other delivery models for training, appeals for denials and reconsideration procedures on an individual service plan.

Q. Increased Federal Financial Participation (§ 441.590)

Unlike similar programs such as those specified under sections 1915(c) and 1915(j) of the Act, section 1915(k) of the Act does not allow States to choose only specific categories or types of home and community-based attendant services and supports to be included in the overall service benefit. Recognizing the section 1915(k) option is a more robust service package, section 1915(k)(2) of the Act requires States to receive an increased FMAP of 6 percent for the provision of services under the Community First Choice Option effective October 1, 2011, or later under an approved State plan amendment. We propose to implement this requirement at § 441.590.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Assessment of Need (§ 441.535)

Proposed § 441.535 would require States to conduct face-to-face assessments of the individual's needs, strengths and preferences. Specifically, the face-to-face assessments may use one or more processes and techniques to obtain information about an individual, including but not limited to the information listed in proposed § 441.535(a)(1) through (8). In addition to the initial face-to-face assessment, proposed § 441.535 would require States to conduct face-to-face assessments at least every 12 months as needed. The burden associated with this requirement would be the time required for a State to conduct a face-to-face assessment. We estimate that all States that elect this option will comply with this requirement. We further estimate that it will take each State 1 hour to perform a face-to-face assessment; however, we know that the number of assessments will vary according to the number of participants in each State under this State plan option. Because we cannot accurately quantify the number of assessments per State, we are soliciting public comment pertaining to the per State volume and will reevaluate this issue and the associated burden estimate in the final rule stage of rulemaking.

B. ICRs Regarding Service Plan (§ 441.540)

As stated in proposed § 441.540(a), the State must develop a person-centered planning process resulting in a service plan, based on the assessment of need, in collaboration with the individual and the individual's authorized representative, if applicable. Proposed § 441.540(b) lists the minimum components of a person-centered service plan, while proposed § 441.540(c) lists the requirements of a service plan. Proposed § 441.540(d) would require that a service plan must be agreed to in writing by the individual or the individual's representative, if applicable. In addition, States must provide a copy of the plan to the individual.

The burden associated with the aforementioned requirements is the time and effort necessary for a State to both develop and finalize a written service plan for each individual. We estimate that it will take each State an average of 2 hours to develop and finalize a service plan. Because we cannot accurately quantify the number of service plans per State, we are soliciting public comment pertaining to the per State volume and will reevaluate this issue and the associated burden estimate in the final rule stage of rulemaking.

In addition to the burden associated with developing and finalizing service plans, proposed § 441.540 also imposes a disclosure requirement. As part of the finalization process, States are required to give each individual a copy of the service plan. We estimate that it will take each State 30 minutes to produce and disseminate a copy of a finalized report to an individual. The total estimated burden associated with this disclosure requirement will vary

according to the number of participants in each State under this State plan option. Because we cannot accurately quantify the number of plan copies each State will need to distribute to the individuals in the State plan option, we are soliciting public comment pertaining to the number of plan copies distributed per State and will reevaluate this issue and the associated burden estimate in the final rule stage of rulemaking.

Proposed § 441.540(e) would require States to review each service plan at least every 12 months. We estimate that it will take each State 1 hour to annually review and revise (upon reassessment of need or at the individual's request) a single written service plan. The total estimated burden associated with this requirement will vary according to the number of participants in each State under this State plan option. Because we cannot accurately quantify the number of plans each State will need to review annually, we are soliciting public comment pertaining to the number of plans each State must review annually and will reevaluate this issue and the associated burden estimate in the final rule stage of rulemaking.

C. ICRs Regarding Service Models (§ 441.545)

Proposed § 441.545 would require State to choose one or more service delivery models by which to provide self-directed home and community-based attendant services and supports. Specifically, a State may choose one or more of the models discussed in proposed § 441.545(a) through (b). While we acknowledge that the service models discussed in proposed § 441.545(a) through (b) contain information collection requirements, it is difficult for us to accurately quantify both the number of States that will avail themselves of these models and the time associated with the information collection requirements contained therein. As a result, because we are unable to estimate both the total number of participating States and the burden associated with these requirements, we are soliciting public comment pertaining to this burden and will reevaluate this issue in the final rule stage of rulemaking.

D. ICRs Regarding Support System (§ 441.555)

As stated in proposed § 441.555, for the self-directed model with a service budget, States must provide or arrange for the provision of a support system. Proposed § 441.555(a) would require a support system to appropriately assess and counsel an individual or the individual's representative, if applicable, before enrollment. Proposed § 441.555(b) would require that the support system to provide appropriate information, counseling, training and assistance to ensure that an individual is able to manage the services and budgets. In addition, proposed § 441.555(b) would require that the information be communicated to the individual in a manner and language understandable by the individual.

The burden associated with proposed § 441.555 would be the time and effort necessary for the State or the provider of the support system to meet the aforementioned disclosure requirements. We estimate that it will take each State 2 hours to provide or arrange for the provision of a support system that meets the necessary requirements. However, we cannot estimate the frequency with which a State will provide or arrange for the provision of support systems, as it will vary by State depending on the number of participants that are assessed to need this service. Because we cannot accurately quantify the frequency with which a State will provide or arrange for the provision of support systems, we are soliciting public comments on this issue and will reevaluate the associated burden estimate in the final rule stage of rulemaking.

E. ICRs Regarding Service Budget Requirements (§ 441.560)

Proposed § 441.560(a) would require, for the self-directed model with a service budget, that a service budget be developed and approved by the State based on the assessment of need and service plan. The budget must include all of the information listed in § 441.560(a) through (b). The burden associated with this requirement is the time and effort put forth by the State to develop a service budget. We estimate that it will take each State 3 hours to develop a service budget; however, the total number of budgets each State must prepare will depend on the number of individual's utilizing the self-directed model in each State. Because we are unable to estimate the total number of service budgets each State would be required to develop, we are soliciting public comments pertaining to this issue and will reevaluate the burden estimate in the final rule stage of rulemaking.

Proposed § 441.560(c) would require States to have procedures in place that will provide safeguards to individuals when the budgeted services amount is insufficient to meet the individual's needs. The burden associated with this requirement is the time and effort it would take for a State to develop and maintain its procedures. We estimate that will take each State 16 hours to develop these procedures. Similarly, we estimate that all States that elect this State plan option will comply with this requirement. We believe this requirement imposes a one-time burden; therefore, we have not assigned any future burden to this requirement. We cannot estimate the total annual burden associated with this requirement because it will vary by State. Because we cannot quantify the aforementioned burden, we are soliciting public comments pertaining to this issue and will reevaluate the burden estimate in the final rule stage of rulemaking.

Proposed § 441.560(d) would require a State to have a method of notifying individuals of the amount of any limit that applies to an individual's Community First Choice Option services and supports. The burden associated with this requirement is the time and effort it would take for each State to develop and distribute a notice to each individual. We estimate that all States that elect this option must comply with this notification requirement. We further estimate it would take each State 15 minutes to develop and distribute a single notice. The total number of notices each State must distribute will vary depending on the number of individual's utilizing the self-directed model in each State. Therefore, we are unable to estimate the burden associated with this requirement. We are soliciting public comments pertaining to this issue and will reevaluate the burden estimate in the final rule stage of rulemaking.

F. ICRs Regarding Provider Qualifications (§ 441.565)

Proposed § 441.565 would require States to provide assurances that necessary safeguards have been taken to protect the health and welfare of enrollees in the Community First Choice State Option. In addition, the States must define in writing the adequate qualifications for providers in the agency model of Community First Choice services and supports. The burden associated with the aforementioned requirements is the time and effort necessary to develop system safeguards that include written adequacy qualifications for providers. We estimate that it will take each State 16 hours to comply with this requirement; however, the total estimated annual burden associated with these requirements will vary by State. We are unable to estimate the total number of written assurances that will be required; therefore, we are

seeking public comment pertaining to this issue and will reevaluate the burden estimate in the final rule stage of rulemaking.

G. ICRs Regarding Data Collection (§ 441.580)

Proposed § 441.580 would require a State to provide information regarding the provision of home and community-based attendant services and supports under the Community First Choice Option for each fiscal year for which such services are provided. Specifically, States must submit the information contained in proposed § 441.580(a) through (f). We estimate that it will take each State 24 hours to submit the required information. We also estimate that all States that elect this State plan option must comply with this requirement. The total estimated annual burden associated with this requirement is 24 hours at a cost of $576 per State for the initial year.

H. ICRs Regarding Quality Assurance System (§ 441.585)

Proposed § 441.585 would require each State to establish and maintain a comprehensive, continuous quality assurance system, detailed in the State plan amendment, that includes a quality improvement strategy and employs measures for program performance and quality of care, standards for delivery models, mechanisms for discovery and remediation, and quality improvements proportionate to the benefit and number of individuals served. Specifically, the quality assurance system must include but not be limited to the components listed in proposed § 441.585(a) through (c). The burden associated with this requirement is the time and effort necessary for a State to develop and maintain a quality assurance system. We estimate that it will take 100 hours for each State to comply with the initial requirement to develop a quality assurance system. The total estimated annual burden associated with developing a quality assurance system is 100 hours per State, at a cost of $2,400. Similarly, we estimate that each State will incur an annual burden of 16 hours to review and maintain its quality assurance system. The total estimated annual burden associated with reviewing a quality assurance system is 16 hours at a cost of $384 for each participating State.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [CMS–2337–P].

Fax: (202) 395–6974; or

E-mail: OIRA_submission @omb.eop.gov.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

This proposed rule implements section 2401 of the Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010. The Secretary is to establish a new State plan option to provide home and community-based attendant services and supports at a 6 percentage point increase in Federal matching payments for expenditures related to the provision of services under this option. Section 2401 of the Affordable Care Act, entitled "Community First Choice Option," adds a new section 1915(k) of the Act that allows States, at their option, to provide home and community-based attendant services and supports under their State plan beginning October 1, 2011.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), 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). The proposed rule is estimated to have an economic impact of approximately $1,585,000,000 in the fiscal year beginning on October 1, 2011. Therefore, we estimate that this rulemaking is economically significant as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared an RIA below that to the best of our ability presents the costs and benefits of the rulemaking.

The RFA requires agencies to analyze options for regulatory relief of small entities 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 health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business and having revenues of less than $7 million to $34.5 million in any 1 year. (For details, *see* the Small Business Administration's Table of Size Standards at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=2465b064ba6965cc1fbd2eae60854b11&rgn=div8&view=text&node=13:1.0.1.1.16.1.266.9&idno=13.*) Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant 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 603 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 are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

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 2011, that threshold is approximately $136 million. Because this rule does not mandate State participation in section 1915(k) of the Act, there is no obligation for the State to make any change to their Medicaid program. As a result, there is no mandate for the State. Therefore, we estimate this rule will not mandate expenditures in the threshold amount of $136 million in any 1 year.

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. As stated above, this proposed rule would not have a substantial effect on State and local governments.

C. Anticipated Effects

1. Overview

This proposed rule provides States with additional flexibility to finance home and community based services by establishing a new Community First Choice Option at an increased Federal financial participation for attendant services and supports. Because of this enhanced flexibility, and the fact that a majority of States may already provide attendant services and supports through optional medical assistance services in its Medicaid State plan, HCBS waiver programs or both, we anticipate that each State will likely compare and decide which vehicle provides greater benefits and stability to their overall Medicaid program. As such, at this time it is very difficult to accurately predict how many States will choose to adopt the Community First Choice (CFC) Option, and how a State's election to exercise this option will influence other parts of its Medicaid program. However, for purposes of this RIA, we assume a gradual growth in the number of States adopting this option, so that, by FY 2015, 25 percent of eligible persons who would want this coverage would reside in States that offer it.

2. Effects on Medicaid Recipients

We anticipate that a large number of Medicaid recipients will be affected. We believe the optional expansion of settings where attendant care services and supports may be furnished at the increased Federal Medical Assistance Percentage (FMAP) will likely have significant positive effects on Medicaid recipients, particularly on their demand for these services. We anticipate that the provisions of the proposed rule will likely increase State and local accessibility to services that augment the quality of life for individuals through a person-centered plan of service and various quality assurances, all at a potentially lower per capita cost relative to alternative care-settings.

3. Effects on Other Providers

We anticipate that this proposed rule will increase the demand for attendant care services and supports. We believe this effect will be beneficial to providers, particularly providers of attendant care services and supports. Additionally, if the increase in demand for such services is sufficient, the number of providers of such services may increase.

4. Effects on the Medicaid Program Expenditures

Table 1 provides estimates of the anticipated Medicaid program expenditures associated with furnishing attendant care services and supports. The estimates were made using various assumptions about increases in service utilization and costs, as well as assumptions about the induced utilization that may result from the CFC option. We have taken into account the varying costs for those who have a need for an institutional level of care as opposed to those who do not. We have allowed for possible State incentives due to the increased FMAP rate, as well as for the possibility of savings due to beneficiaries being diverted from nursing facility use. Given these assumptions and based on prior program experience, our estimate is shown in Table 1. We estimate the following costs to the Medicaid program:

TABLE 1—ATTENDANT CARE SERVICES AND SUPPORTS MEDICAID COST ESTIMATES

[In millions] [1]

Services	FY 2011	FY 2012	FY 2013	FY 2014	FY2015
Federal Share	N/A	$1,075	$1,475	$2,425	$3,420
State Share	N/A	510	615	1,085	1,540
Total	N/A	1,585	2,090	3,510	4,960

[1] Figures are rounded to the nearest $1 million and assume increased State participation per fiscal year.

5. Effects on States

Varying State definitions of personal care services and rules concerning who may furnish them make it difficult to estimate accurately the potential increases in expenditures for States that choose to adopt the CFC option under section 1915(k) of the Act. Therefore, in light of the provisions of this proposed rule, we welcome comments about the number of States that are likely to participate in the CFC program.

D. Alternatives Considered

Section 2401 of the Affordable Care Act is the legislation that we are required to implement. Therefore we considered no other alternatives.

E. Accounting Statement

As required by OMB Circular A–4 (available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), we have prepared an accounting statement showing the classification of expenditures associated with the provisions of this rule and discussed earlier in the RIA. This statement, to the best of our ability, captures the anticipated distributional effects of section 1915(k) services offered by qualified providers in the Medicaid program.

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURE FROM FY 2011 TO FY 2015

[In millions]

CATEGORY		
BENEFITS	Qualitative: Provision of the CFC option will increase State and local accessibility to services that increase the quality of life for individuals through a person-centered plan of service and various quality assurances, and reduce the financial strain on States and Medicaid participants.	
COSTS	Administrative costs included in the Paperwork Reduction Act section of the preamble.	
TRANSFERS	PRIMARY ESTIMATE	
Federal Annualized Monetized ($millions/year)	*3 percent Discount Rate* $1,630.6	*7 percent Discount Rate* $1,568.6
From Whom to Whom?	Federal Government to Qualified Providers.	
State Annualized Monetized ($millions/year)	$728.4	$700.8
From Whom to Whom?	State Governments to Qualified Providers.	

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 441

Aged, Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for part 441 continues to read as follows:

Authority: Sec 1102 of the Social Security Act (42 U.S.C 1302).

2. Part 441 is amended by adding subpart K to read as follows:

Subpart K—Home and Community-based Attendant Services and Supports State Plan Option (Community First Choice)

Sec.

Subpart K—Home and Community-based Attendant Services and Supports State Plan Option (Community First Choice)

§ 441.500 Basis and Scope.

(a) *Basis.* This subpart implements section 1915(k) of the Act concerning the Community First Choice Option to provide home and community-based attendant services and supports through a State plan.

(b) *Scope.* The Community First Choice Option is designed to make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.

§ 441.505 Definitions.

As used in this subpart:

Activities of daily living (ADLs) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

Agency-provider model means, with respect to the provision of home and community-based attendant services and supports, a method of providing self-directed services and supports under which entities contract for the provision of these services and supports.

Backup systems and supports means electronic devices used to ensure continuity of services and supports. These items may include pagers, personal emergency response systems, and other mobile communication devices. Persons identified by an individual can also be included as backup supports.

Health-related tasks means specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

Individual's representative means a parent, family member, guardian, advocate, or other authorized representative of the individual.

Instrumental activities of daily living (IADLs) means activities related to living independently in the community, including but is not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.

Other models means methods, other than an agency-provider model, for the provision of self-directed services and supports. These models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

Self-directed means a consumer controlled method of selecting and providing services and supports that allow the individual, or where appropriate, the individual's representative, maximum control of the home and community-based attendant

services and supports, regardless of who acts as the employer of record.

§ 441.510 Eligibility.

To receive Community First Choice services under this section, an individual must meet the following requirements:

(a) Be eligible for medical assistance under the State plan.

(b) Have an income that meets one of the following thresholds as determined annually:

(1) Is equal to or less than 150 percent of the Federal poverty level (FPL).

(2) Is greater than 150 percent of the FPL, and is eligible for nursing facility services under the State plan and for whom it has been determined that in the absence of home and community-bases attendant services and supports, the individual would otherwise require a Medicaid covered level of care furnished in a hospital, a nursing facility, an intermediate care facility for the mentally retarded or an institution for mental diseases.

(3) Qualifies for Medicaid assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act, and is receiving at least one home and community-based waiver service per month.

(c) In determining whether the 150 percent of the FPL requirement is met, States must apply the same income disregards in accordance with section 1902(r)(2) of the Act as they do under their Medicaid State plan.

§ 441.515 Statewideness.

States must provide the Community First Choice Option to individuals:

(a) On a Statewide basis.

(b) In a manner that provides such services and supports in the most integrated setting appropriate to the individual's needs, and without regard to the individual's age, type or nature of disability, severity of disability, or the form of home and community-based attendant services.

(c) In a manner that provides the supports that the individual requires in order to lead an independent life.

§ 441.520 Required services.

(a) If a State elects to provide the Community First Choice Option, the State must provide all of the following services:

(1) Assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, or cueing.

(2) Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health related tasks.

(3) Back-up systems or mechanisms to ensure continuity of services and supports, as defined in § 441.505 of this subpart.

(4) Voluntary training on how to select, manage, and dismiss attendants.

(b) The State may provide permissible services and supports which include the following:

(1) Expenditures for transition costs such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to transition from a nursing facility, institution for mental diseases, or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides.

(2) Expenditures relating to a need identified in an individual's person-centered plan of services that increase a participant's independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(3) The services and supports that are purchased must be linked to an assessed need or goal established in the individual's person-centered service plan.

§ 441.525 Excluded services.

The Community First Choice Option may not include the following:

(a) Room and board costs for the individual, except for allowable transition services described in § 441.520(b)(1) of this subpart.

(b) Special education and related services provided under the Individuals with Disabilities Education Act that are related to education only, and vocational rehabilitation services provided under the Rehabilitation Act of 1973.

(c) Assistive devices and assistive technology services other than those defined in § 441.520(a)(5) of this subpart or those that are based on a specific need identified in the service plan when used in conjunction with other home and community-based attendant services.

(d) Medical supplies and equipment.

(e) Home modifications.

§ 441.530 Setting.

States must make available attendant services and supports in a home or community setting, which do not include the following:

(a) A nursing facility.

(b) An institution for mental diseases.

(c) An intermediate care facility for the mentally retarded.

(d) Any settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment or custodial care.

(e) A building on the grounds of or immediately adjacent to, a public institution or disability-specific housing complex, designed expressly around an individual's diagnosis that is geographically segregated from the larger community, as determined by the Secretary.

§ 441.535 Assessment of need.

States must conduct a face-to-face assessment of the individual's needs, strengths, and preferences in accordance with the following:

(a) States may use one or more processes and techniques to obtain information about an individual including the following:

(1) Health condition.

(2) Personal goals and preferences for the provision of services.

(3) Functional limitations.

(4) Age.

(5) School.

(6) Employment.

(7) Household.

(8) Other factors that are relevant to the need for and authorization and provision of services.

(b) Assessment information supports the determination that an individual requires the Community First Choice Option and also supports the development of the person-centered service plan and, if applicable, service budget.

(c) The assessment of need must be conducted at least every 12 months, as needed when the individual's support needs or circumstances change significantly necessitating revisions to the service plan, or at the request of the individual, or the individual's representative, as applicable.

§ 441.540 Person-centered service plan.

(a) *Person-centered planning process.* The person-centered planning process must include the following criteria:

(1) Includes people chosen by the individual.

(2) Provides necessary support to ensure that the individual has a meaningful role in directing the process.

(3) Occurs at times and locations of convenience to the individual.

(4) Reflects cultural considerations of the individual.

(5) Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.

(6) Offers choices to the individual regarding the services and supports they receive and from whom.

(7) Includes a method for the individual to request updates to the plan.

(b) *The person-centered plan.* The person-centered plan must reflect the services that are important for the individual to meet individual services and support needs as assessed through a person-centered functional assessment, as well as what is important to the person with regard to preferences for the delivery of such supports. Commensurate with the level of need of the individual, the plan must include the following criteria:

(1) Reflect the individual's strengths and preferences.

(2) Reflect clinical and support needs as identified through a person-centered functional assessment.

(3) Include individually identified goals, which may include, as desired by the individual, items related to relationships, community participation, employment, income and savings, health care and wellness, education, and others.

(4) Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals and the providers of those services and supports.

(5) Reflect risk factors and measures in place to minimize them, including back-up strategies when needed.

(6) Be signed by all individuals and providers responsible for its implementation.

(7) Be understandable to the individual receiving services and the individuals important in supporting him or her.

(8) Include a timeline for review.

(9) Identify the individual and/or entity responsible for monitoring the plan.

(10) Be distributed to everyone involved (including the participant) in the plan.

(11) Be directly integrated into self-direction where individual budgets are used.

(12) Prevent the provision of unnecessary or inappropriate care.

(c) *Requirements of the plan.* All of the State's applicable policies and procedures associated with the person-centered service plan development must be carried out and must include, but are not limited to, the following policies and procedures:

(1) Ensure the responsibilities for assessment of need and service plan development are identified.

(2) Ensure the planning process is timely.

(3) Ensure the individual's needs are assessed and the services and supports meet the individual's needs.

(4) Establish conflict of interest standards for assessment of need and the service plan development process that apply to all individuals and entities, public or private. At a minimum, these standards must ensure that the individuals or entities involved in the person-centered assessment of need and service plan development process are not:

(i) Related by blood or marriage to the individual, or to any paid caregiver of the individual.

(ii) Financially responsible for the individual.

(iii) Empowered to make financial or health-related decisions on behalf of the individual.

(iv) Individuals who would benefit financially from the provision of assessed needs and services.

(d) *Finalizing the person-centered service plan.* The service plan must be finalized and agreed to in writing by the individual or, as appropriate, the individual's representative and a copy of the plan must be provided to the individual.

(e) *Reviewing the person-centered service plan.* The service plan must be reviewed, and revised upon reassessment of need, at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual or the individual's representative, as applicable.

§ 441.545 Service models.

A State may choose one or more of the following as the service delivery model to provide self-directed home and community-based attendant services and supports:

(a) *Agency model.* (1) The agency model is a delivery method in which the services and supports are provided by entities under a contract.

(2) Under the agency model for the Community First Choice option, individuals maintain the ability to hire and fire the providers of their choice for the services identified in their person-centered service plan.

(b) *Self-directed model with service budget.* A self-directed model with a service budget is one in which the individual has both a service plan and service budget based on the person-centered assessment of need.

(1) *Financial management entity.* States must make available financial management services to all individuals with a service budget. The financial management entity performs functions including, but not limited to, the following services:

(i) Collect and process timesheets of the individual's workers.

(ii) Process payroll, withholding, filing, and payment of applicable Federal, State and local employment related taxes and insurance.

(iii) Maintain a separate account for each individual's budget.

(iv) Track and report disbursements and balances of each individual's funds.

(v) Process and pay invoices for services in the service plan.

(vi) Provide individual periodic reports of expenditures and the status of the approved service budget.

(vii) States may perform the functions of a financial management entity internally or use a vendor organization that has the capabilities to perform the required tasks in accordance with applicable IRS requirements.

(2) *Direct cash.* States may disburse cash prospectively to individuals self-directing their Community First Choice Option services and supports and must meet the following requirements:

(i) Ensure compliance with all applicable requirements of the Internal Revenue Service, including but not limited to, retaining required forms and payment of FICA, FUTA and State unemployment taxes.

(ii) Permit individuals, or their representatives as applicable, using the cash option to choose to use the financial management entity for some or all of the functions described in paragraph (b)(1)(ii) of this section.

(iii) Make available a financial management entity to an individual who has demonstrated, after additional counseling, information, training, or assistance that the individual cannot effectively manage the cash option described in this section.

(iv) If the cash option is the only model offered by the State for Community First Choice, the State may require an individual to use the financial management entity services under the cash option, but must provide the individual with the conditions under which this option would be enforced.

(3) *Vouchers.* (i) States have the option to issue vouchers to individuals who self-direct their Community First Choice Option services and supports.

(ii) States that choose to offer the vouchers must ensure compliance with all applicable requirements of the Internal Revenue Service.

§ 441.550 Service plan requirements for self-directed model with service budget.

An approved self-directed service plan conveys authority to the individual to perform, at a minimum, the following tasks:

(a) Recruit and hire workers to provide self-directed services, including specifying worker qualifications.

(b) Fire workers.

(c) Supervise workers in the provision of Community First Choice Option services and supports.

(d) Manage workers in the provision of Community First Choice Option services and supports, which includes the following functions:

(1) Determining worker duties.

(2) Scheduling workers.

(3) Training workers in assigned tasks.

(4) Evaluating workers performance.

(e) Determining the amount paid for a service, support, or item.

(f) Reviewing and approving provider invoices.

§ 441.555 Support system.

For the self-directed model with a service budget, States must provide, or arrange for the provision of, a support system that meets all of the following conditions:

(a) Appropriately assesses and counsels an individual, or the individual's representative, if applicable, before enrollment.

(b) Provides appropriate information, counseling, training, and assistance to ensure that an individual is able to manage the services and budgets.

(1) This information must be communicated to the individual in a manner and language understandable by the individual.

(2) The support activities must include at least the following:

(i) Person-centered planning and how it is applied.

(ii) Range and scope of individual choices and options.

(iii) Process for changing the person-centered service plan and service budget.

(iv) Grievance process.

(v) Risks and responsibilities of self-direction.

(vi) The ability to freely choose from available home and community-based attendant providers.

(vii) Individual rights.

(viii) Reassessment and review schedules.

(ix) Defining goals, needs, and preferences.

(x) Identifying and accessing services, supports, and resources.

(xi) Development of risk management agreements.

(xii) Development of a personalized backup plan.

(xiii) Recognizing and reporting critical events.

(xiv) Information about an advocate or advocacy systems available in the State and how an individual, or individual's representative, if applicable, can access the advocate or advocacy systems.

§ 441.560 Service budget requirements.

(a) For the self-directed model with a service budget, a service budget must be developed and approved by the State based on the assessment of need and service plan and must include all of the following requirements:

(1) The specific dollar amount an individual may use for Community First Choice Option services and supports.

(2) The procedures for informing an individual of the amount of the service budget before the service plan is finalized.

(3) The procedures for how an individual may adjust the budget including the following:

(i) The procedure for an individual to freely change the budget.

(ii) The circumstances, if any, that may require prior approval by the State before a budget adjustment is made.

(4) The circumstances, if any, that may require a change in the service plan.

(5) The procedures that govern the determination of transition costs and expenditures, relating to a need in the service plan, that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance.

(6) The procedures for an individual to request a fair hearing under § 441.300 of this part if an individual's request for a budget adjustment is denied or the amount of the budget is reduced.

(b) The budget methodology set forth by the State to determine an individual's service budget amount must meet all of the following criteria:

(1) The State's method of determining the budget allocation is objective and evidence based utilizing valid, reliable cost data.

(2) Be applied consistently to individuals.

(3) Be included in the State plan.

(4) Includes a calculation of the expected cost of Community First Choice Option services and supports, if those services and supports are not self-directed.

(5) The State has a process in place that describes the following:

(i) Any limits it places on Community First Choice Option services and supports, and the basis for the limits.

(ii) Any adjustments that are allowed and the basis for the adjustments.

(c) The State must have procedures in place that will provide safeguards to individuals when the budgeted service amount is insufficient to meet the individual's needs.

(d) The State must have a method of notifying individuals of the amount of any limit that applies to an individual's Community First Choice Option services and supports.

(e) The budget may not restrict access to other medically necessary care and services furnished under the State plan and approved by the State but which are not included in the budget.

(f) The State must have a procedure to adjust a budget when a reassessment indicates a change in an individual's medical condition, functional status, or living situation.

§ 441.565 Provider qualifications.

(a) The State must provide assurances that necessary safeguards have been taken to protect the health and welfare of enrollees in the Community First Choice State Option, and must define in writing adequate qualifications for providers in the agency model of Community First Choice services and supports.

(b) An individual has the option to permit family members, or any other individuals, to provide Community First Choice attendant services and supports identified in the service plan provided they meet the qualifications to provide the services and supports.

(c) An individual retains the right to train workers in the specific areas of attendant care needed by the individual and to perform the needed assistance in a manner that comports with the individual's personal, cultural, or religious preferences.

(d) An individual retains the right to establish additional staff qualifications based on the individual's needs and preferences.

§ 441.570 State assurances.

A State must assure the following requirements are met:

(a) For the first full fiscal year in which the State Plan amendment is implemented, a State must maintain, or exceed, the level of expenditures for services provided under sections 1115, 1905(a), and 1915, of the Act, or otherwise to individuals with disabilities or elderly individuals attributable to the preceding fiscal year.

(b) All applicable provisions of the Fair Labor Standards Act of 1938.

(c) All applicable provisions of Federal and State laws regarding the following:

(1) Withholding and payment of Federal and State income and payroll taxes.

(2) The provision of unemployment and workers compensation insurance.

(3) Maintenance of general liability insurance.

(4) Occupational health and safety.

§ 441.575 Development and Implementation Council.

(a) States must establish a Development and Implementation Council primarily comprised primarily of individuals with disabilities, elderly individuals, and their representatives.

(b) States must consult and collaborate with the Council when developing and implementing a State plan amendment to provide home and community-based attendant services and supports.

§ 441.580 Data collection.

A State must provide the following information regarding the provision of home and community-based attendant services and supports under the Community First Choice Option for each fiscal year for which the services and supports are provided:

(a) The number of individuals who are estimated to receive the Community First Choice under this State plan option during the fiscal year.

(b) The number of individuals that received the services and supports during the preceding fiscal year.

(c) The number of individuals served broken down by type of disability, age, gender, education level, and employment status.

(d) The specific number of individuals who have been previously served under sections 1115, 1915(c) and (i) of the Act, or the personal care State plan option.

(e) Data regarding how the State provides the Community First Choice State option and other home and community-based services.

(f) The cost of providing Community First Choice State option and other home and community-based services and supports.

(g) Data regarding how the State provides individuals with disabilities who otherwise qualify for institutional care under the State plan or under a waiver the choice to receive home and community-based services in lieu of institutional care.

§ 441.585 Quality assurance system.

States must establish and maintain a comprehensive, continuous quality assurance system, detailed in the State plan amendment, that includes a quality improvement strategy and employs measures for program performance and quality of care, standards for delivery models, mechanisms for discovery and remediation, and quality improvements proportionate to the benefit and number of individuals served.

(a) *Details of the quality assurance system.* Details of the quality assurance system must include the following:

(1) *Program performance measures.* The States' quality assurance system must be designed to measure and provide evidence of program performance related to the following:

(i) Health and welfare.

(ii) Provider qualifications.

(iii) Choice of institution or community.

(iv) Choice of services, supports and providers.

(v) Cost of services and supports.

(2) *Quality of care measures.* The State's quality assurance system must be designed to measure individual outcomes associated with the receipt of community-based attendant services and supports, particularly with respect to the health and welfare of recipients of this service. These measures must be made available to CMS upon request and must include a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of community based attendant services and supports, as well as quality indicators approved or prescribed by the Secretary.

(3) *Standards for delivery models.* The States' quality assurance system must include standards for agency-based and other delivery models for training, appeals for denials and reconsideration procedures on an individual service plan.

(4) *Choice and control.* The quality assurance system will employ methods that maximize consumer independence and control and will provide information about the provisions of quality improvement and assurance to each individual receiving such services and supports.

(b) *Stakeholder feedback.* The State must elicit and incorporate feedback from key stakeholders to improve the quality of the community-based attendant services and supports benefit.

(c) *Collection and evaluation.* The State must collect and report on monitoring, remediation, and quality improvements related to information defined in the State's quality improvement strategy.

§ 441.590 Increased Federal financial participation.

Beginning October 1, 2011, the FMAP applicable to the State will be increased by 6 percentage points, for the provision of the Community First Choice Option home and community-based attendant services, under an approved State plan amendment.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 1, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 31, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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S. 188/P.L. 112–2
To designate the United States courthouse under construction at 98 West First Street, Yuma, Arizona, as the ''John M. Roll United States Courthouse''. (Feb. 17, 2011; 125 Stat. 4)
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